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THE GENERAL STATUTES OF NORTH CAROLINA

1977 CUMULATIVE SUPPLEMENT

**Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers**

UNDER THE DIRECTION OF
W. M. WILLSON, J. H. VAUGHAN AND SYLVIA FAULKNER

JAN 24 1978
Volume 2C

1975 Replacement

Annotated through 292 N.C. 643 and 33 N.C. App. 240. For complete
scope of annotations, see scope of volume page.

**Place with Corresponding Volume of Main Set. This
Supersedes Previous Pocket Supplement, Which
May Be Retained for Reference Purposes.**

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Preface

This Cumulative Supplement to Replacement Volume 2C contains the general laws of a permanent nature enacted at the First and Second 1975 and the 1977 Sessions of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

The General Statutes of North Carolina

1977 Cumulative Supplement

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the First and Second 1975 and the 1977 Sessions of the General Assembly affecting Chapters 63 through 96 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 285 (p. 598)-292 (p. 643).

North Carolina Court of Appeals Reports volumes 22 (p. 509)-33 (p. 240).

Federal Reporter 2nd Series volumes 498 (p. 913)-554 (p. 1074).

Federal Supplement volumes 377 (p. 193)-431 (p. 434).

Federal Rules Decisions volumes 63 (p. 23)-74 (p. 213).

United States Reports volumes 415 (p. 605)-419 (p. 984).

Supreme Court Reporter volume 95 (p. 2683)-97 (p. 2204).

North Carolina Law Review volume 55 (pp. 1-750).

Wake Forest Intramural Law Review volumes 6-13 (p. 269).

Duke Law Journal volumes 3 (p. 485)-6 (p. 1395).

North Carolina Central Law Journal volume 2 (pp. 1-164), volume 3 (pp. 123-268), volume 7 (pp. 201-413), volume 8 (pp. 1-122).

Opinions of the Attorney General.

§ 63-63. Specific powers of municipalities operating airports.

A municipality operating an airport acts in a proprietary capacity. *Bedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 322 N.C. 55, 312 S.E.2d 182 (1974).

Fixing of Fees Not Administrative Decision. — The fixing by a municipal airport authority of fees it will charge for the use of its property is not an "administrative decision." *Bedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 322 N.C. 55, 312 S.E.2d 182 (1974).

In determining the fees it will charge for the privilege of landing on a small space in parking and the rent it will charge for the use of its property, a municipal airport authority is acting as the proprietor of the property, not as a regulatory agency. *Bedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 322 N.C. 55, 312 S.E.2d 182 (1974).

Unilateral fixing of fees under subsection (b) is where prohibited in this section, and no fee procedure is required or permitted. *Dango-Dallas Airport Auth. v. Delta Air Lines*, 423 F. Supp. 1099 (N.C. 1975).

And Notice Not Required. — Nothing in this section requires a municipal airport authority to give notice to owners or prospective users of its property that it will charge a landing fee or a change in fees. *Bedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 322 N.C. 55, 312 S.E.2d 182 (1974). *Dango-Dallas Airport Auth. v. Delta Air Lines*, 423 F. Supp. 1099 (N.C. 1975).

Fee Fixing. — The provision in this section requires that a municipal airport authority conduct a hearing, receive evidence, and make findings of fact or law or both before any other procedural steps in determining the landing fee or fee to be charged by a municipal airport. *Bedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 322 N.C. 55, 312 S.E.2d 182 (1974). *Dango-Durham Airport Auth. v. Delta Air Lines*, 423 F. Supp. 1099 (N.C. 1975).

The requirement of such findings in landing fees must be considered implicit in the concept of reasonableness which forms the foundation of subsection (b). *Bedmont-Durham Airport Auth. v. Delta Air Lines*, 423 F. Supp. 1099 (N.C. 1975).

The General Statutes of North Carolina

1977 Cumulative Supplement

VOLUME 2C

Chapter 63.

Aeronautics.

ARTICLE 1.

Municipal Airports.

§ 63-1. Definitions; singular and plural.

Applied in *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

ARTICLE 6.

Public Airports and Related Facilities.

§ 63-53. Specific powers of municipalities operating airports.

A municipality operating an airport acts in a **proprietary capacity**. *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

Fixing of Fees Not Administrative Decision. — The fixing by a municipal airport authority of fees it will charge for the use of its property is not an "administrative decision." *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

In determining the fee it will charge for the privilege of landing an aircraft upon its runway and the rent it will charge for the use of its properties, a municipal airport authority is acting as the proprietor of the property, not as a regulatory agency. *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975).

Unilateral fixing of fees under subsection (5) is nowhere prohibited in this section, and no set procedure is required or commanded. *Raleigh-Durham Airport Auth. v. Delta Air Lines*, 429 F. Supp. 1069 (D.N.C. 1976).

And Notice Not Required. — Nothing in this section requires a municipal airport authority to give notice to present or prospective users of its properties that the authority is contemplating a change in such fees and rental charges. *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975); *Raleigh-Durham Airport Auth. v. Delta Air Lines*, 429 F. Supp. 1069 (D.N.C. 1976).

Nor Hearing. — No provision in this section requires that a municipal airport authority conduct a hearing, receive evidence and make findings of fact or that it follow any other procedural course in determining the landing fees or rentals to be charged by it. *Piedmont Aviation, Inc. v. Raleigh-Durham Airport Auth.*, 288 N.C. 98, 215 S.E.2d 552 (1975); *Raleigh-Durham Airport Auth. v. Delta Air Lines*, 429 F. Supp. 1069 (D.N.C. 1976).

The requirement of some flexibility in landing fees must be considered implicit in the concept of reasonableness which forms the foundation of subsection (5). *Raleigh-Durham Airport Auth. v. Delta Air Lines*, 429 F. Supp. 1069 (D.N.C. 1976).

A fee reasonable under subsection (5) will also meet the test of reasonableness under the commerce clause of the United States Constitution. Raleigh-Durham Airport Auth. v. Delta Air Lines, 429 F. Supp. 1069 (D.N.C. 1976).

There are no constitutional infirmities in the fixing of landing fees and space use charges so

long as the municipality complies with the provisions of subsection (5). Raleigh-Durham Airport Auth. v. Delta Air Lines, 429 F. Supp. 1069 (D.N.C. 1976).

Chapter 65.**Cemeteries.****Article 5.****Removal of Graves.**

Sec.

65-13. Removal of graves; who may disinter, move and reinter; notice; certificate filed; reinterment expenses, due care required.

Article 7.**Cemeteries Operated for Private Gain.**

65-18 to 65-36. [Recodified.]

Article 8.**Municipal Cemeteries.**

65-41 to 65-45. [Reserved.]

Article 9.**North Carolina Cemetery Act.**

65-46. Short title.

65-47. Scope.

65-48. Definitions.

65-49. The North Carolina Cemetery Commission.

65-50. Cemetery Commission; members, selection, quorum.

65-51. Principal office.

65-52. Regular and special meetings.

65-53. Powers.

65-54. Annual budget of Commission; collection of funds for operation.

65-55. License; cemetery company.

Sec.

65-56. Existing companies; effect of Article.

65-57. Licenses for sales organizations, management organizations and brokers.

65-58. Licenses for persons selling preneed grave space.

65-59. Application for change of control; filing fee.

65-60. Records.

65-60.1. Trustees; qualifications; examination of records; enforcement.

65-61. Required trust fund for care and maintenance; remedy of Commission for noncompliance.

65-62. Individual contracts for care and maintenance.

65-63. Requirements for advertising of perpetual care fund.

65-64. Deposits to perpetual care fund.

65-65. Trust fund; financial reports.

65-66. Receipts from sale of personal property or services; trust fund; penalties.

65-67. Applications for license.

65-68. License not assignable or transferable.

65-69. Minimum acreage; sale or disposition of cemetery lands.

65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirement.

65-71. Penalties.

65-72. Burial without regard to race or color.

ARTICLE 5.***Removal of Graves.***

§ 65-13. Removal of graves; who may disinter, move and reinter; notice; certificate filed; reinterment expenses, due care required.

(f) The party effecting the disinterment, removal, and reinterment of a decedent's remains under the provisions of this Chapter shall ensure that the site in which reinterment is accomplished shall be of such suitable dimensions to accommodate the remains of that decedent only and that such site shall be reasonably accessible to all relatives of that decedent, provided that the remains may be reinterred in a common grave where written consent is obtained from the next of kin. If under the authority of this Chapter disinterment, removal, and reinterment is effected by the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any electric power or lighting company, then such disinterment,

removal, and reinterment shall be performed by a funeral director duly licensed as a "funeral director" or a "funeral service licensee" under the provisions of Article 13A of Chapter 90 of the North Carolina General Statutes. (1977, c. 311, s. 1.)

Editor's Note. — The 1977 amendment added the second sentence of subsection (f).

Session Laws 1977, c. 311, s. 2, provides: "This act shall not affect grave removals for which contracts have been entered into prior to the

effective date of this act." The act was ratified May 4, 1977, and made effective on ratification.

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

ARTICLE 7.

Cemeteries Operated for Private Gain.

§§ 65-18 to 65-36: Recodified as §§ 65-46 to 65-72, effective September 1, 1975.

Editor's Note. — This Article was rewritten by Session Laws 1975, c. 768, s. 1, effective Sept.

1, 1975, and has been recodified as Article 9, § 65-46 et seq., of this Chapter.

ARTICLE 8.

Municipal Cemeteries.

§§ 65-41 to 65-45: Reserved for future codification purposes.

ARTICLE 9.

North Carolina Cemetery Act.

§ 65-46. **Short title.** — This Article 9 may be cited as "North Carolina Cemetery Act." (1975, c. 768, s. 1.)

Editor's Note. — This Article is Article 7 of this Chapter as rewritten by Session Laws 1975, c. 768, s. 1, effective Sept. 1, 1975, and recodified. Where appropriate, the historical citations to the sections of the former Article have been added to corresponding sections of the new Article.

Session Laws 1975, c. 768, s. 2, contains a severability clause.

Session Laws 1975, c. 768, s. 4, makes the act effective Sept. 1, 1975.

§ 65-47. **Scope.** — (a) The provisions of this Article shall apply to all persons engaged in the business of operating a cemetery as defined herein, except cemeteries owned and operated by governmental agencies or churches.

(b) Any cemetery beneficially owned and operated by a fraternal organization or its corporate agent for at least 50 years prior to September 1, 1975, shall be exempt from the provisions of Article 9 of this Chapter.

(c) The provisions of this Article shall not apply to persons licensed under G.S. 65-36.1 through 65-36.8 when performing services or selling items for which a license is required under G.S. 65-36.1 through 65-36.8. (1975, c. 768, s. 1; 1977, c. 686, s. 1.)

Editor's Note. — The 1977 amendment added subsection (c).

§ 65-48. Definitions. — As used in this Article, unless otherwise stated or unless the context or subject matter clearly indicates otherwise:

- (1) "Bank of belowground crypts" means any construction unit of belowground crypts acceptable to the Commission which a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.
- (2) "Belowground crypts" consists of an interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and are also known as lawn crypts, westminsters or turf top crypts.
- (3) "Cemetery" means any one or a combination of more than one of the following in a place used or to be used and dedicated or designated for cemetery purposes:
 - a. A burial park, for earth interment.
 - b. A mausoleum.
 - c. A columbarium.
- (4) "Cemetery broker" means a legal entity engaged in the business of arranging sales of cemetery products between legal entities and which sale does not involve a cemetery company, but does not mean funeral establishments or funeral directors operating under G.S. 90-210.25, when dealing between legal entities wherein one such entity shall be members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being. The North Carolina Cemetery Act shall not apply to any cemetery broker selling less than five grave spaces per year.
- (5) "Cemetery company" means any legal entity that owns or controls cemetery lands or property and conducts the business of a cemetery, including all cemeteries owned and operated by governmental agencies, churches and fraternal organizations or their corporate agents for the duration of any sales and management contracts entered into with cemetery sales organizations or cemetery management organizations for cemetery purposes, or with any other legal entity other than direct employees of said governmental agency, church or fraternal organization.
- (6) "Cemetery management organization" means any legal entity contracting as an independent contractor with a cemetery company to manage a cemetery but does not mean individual managers employed by and contracting directly with cemetery companies operating under this Article.
- (7) "Cemetery sales organization" means any legal entity contracting with a cemetery which is exempt or not exempt under this Article to conduct sales of cemetery products, but does not mean individual salesmen or sales managers employed by and contracting directly with cemetery companies operating under this Article, nor does it mean funeral establishments or funeral directors operating under licenses authorized by G.S. 90-210.25 when dealing directly with a cemetery company and with members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being.
- (8) "Columbarium" means a structure or building substantially exposed aboveground intended to be used for the interment of the cremated remains of a deceased person.
- (9) "Commission" means the North Carolina Cemetery Commission.

- (10) "Grave space" means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person.
- (11) "Human remains" or "remains" means the bodies of deceased persons, and includes the bodies in any stage of decomposition, and cremated remains.
- (12) "Mausoleum" means a structure or building substantially exposed aboveground intended to be used for the entombment of remains of a deceased person.
- (13) "Mausoleum section" means any construction unit of a mausoleum acceptable to the commission which a cemetery uses to initiate its mausoleum program or to add to its existing mausoleum structures.
- (14) "Person" means an individual, corporation, partnership, joint venture, or association.
- (15) "Vault" means a crypt or underground receptacle which is used for interment in the ground and which is designed to encase and protect caskets or similar burial devices. For the purposes of this Article, a vault is a preneed item until delivery to the purchaser. (1943, c. 644, s. 2; 1967, c. 1009, s. 2; 1971, c. 1149, s. 1; 1975, c. 768, s. 1; 1977, c. 686, ss. 2, 3.)

Editor's Note. — The 1977 amendment substituted "G.S. 90-210.25" for "G.S. 90-210.10" in the first sentence of subdivision (4) and in subdivision (7), deleted "or shall be an individual negotiating the sale of cemetery property as a part of his or her preneed arrangements under G.S. 65-36.1 through 65-36.8" from the end of the first sentence of

subdivision (4), substituted "with a cemetery which is exempt or not exempt under this Article" for "as an independent contractor with a cemetery company" in subdivision (7), and deleted "or with an individual negotiating the sale of cemetery property as a part of his or her preneed arrangements under G.S. 65-36.1 through 65-36.8" from the end of subdivision (7).

§ 65-49. The North Carolina Cemetery Commission. — There is hereby established in the Department of Commerce a North Carolina Cemetery Commission with the power and duty to adopt rules and regulations to be followed in the enforcement of this Article. (1975, c. 768, s. 1.)

§ 65-50. Cemetery Commission; members, selection, quorum. — The Cemetery Commission shall consist of seven members appointed by the Governor. Two members shall be owners or managers of cemeteries in North Carolina. Three members shall be selected from six nominees submitted by the North Carolina Cemetery Association. Two members shall be public members who have no financial interest in, and are not involved in management of, any cemetery or funeral related business. Four members of the initial Commission shall be appointed for a term to expire June 30, 1977, and three members shall be appointed for a term to expire June 30, 1976. At the end of the respective terms of office of the initial members of the Commission, their successors shall be nominated in the same manner, selected from the same categories and appointed for terms of four years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

A majority of the Commission shall constitute a quorum for the transaction of business.

At the first meeting of the Commission held after September 1, 1975, the Commission shall elect one of its members as its chairman and another as its vice-chairman, both to serve through June 30 of the next following year. Thereafter, at its first meeting held on or after July 1 of each year, the Commission shall elect from its members a chairman and vice-chairman to serve through June 30 of the next following year. (1975, c. 768, s. 1.)

§ 65-51. Principal office. — The principal office of the Commission shall be in the City of Raleigh, North Carolina. Notice of all regular and special meetings of the Commission shall be advertised 10 or more days in advance in at least three newspapers in North Carolina having inter-county circulation in the State. Each member of the Commission shall receive per diem and allowances in accordance with G.S. 138-5. The administrator of the Commission, other employees required to attend and legal counsel to the Commission shall be entitled to actual expenses while attending regular or special meetings of the Commission held other than in Raleigh, North Carolina. All expenses of the Commission shall be paid from funds coming to the Commission pursuant to this Article. (1975, c. 768, s. 1.)

§ 65-52. Regular and special meetings. — The Cemetery Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1975, c. 768, s. 1.)

§ 65-53. Powers. — In addition to other powers conferred by this Article, the Cemetery Commission shall have the following powers and duties:

- (1) The administrator shall be appointed by the Governor upon recommendation of the Cemetery Commission. The Cemetery Commission shall set the compensation of the administrator and such other personnel as are necessary to operate the Commission.
- (2) Prior to the change of control of any cemetery company, an examination of the licensee's records may be required, and if so, the fees provided in subdivision (3) hereof would apply thereto.
- (3) Investigate, upon its own initiative or upon a verified complaint in writing, the actions of any person engaged in the business or acting in the capacity of a licensee under this Article. The license of a licensee may be revoked or suspended for a period not exceeding two years, or until compliance with a lawful order imposed in the final order of suspension, or both, where the licensee in performing or attempting to perform any of the acts specified in this Article has been guilty of:
 - a. Failing to pay the fees required herein;
 - b. Failing to make any reports required by this Article;
 - c. Failing to remit to the care and maintenance trust fund, merchandise trust fund, or preconstruction trust fund the required amounts;
 - d. Making any substantial misrepresentation;
 - e. Making any false statement of a character likely to influence or persuade;
 - f. A continued and flagrant course of misrepresentation or making of false promises through cemetery agents or salesmen;
 - g. Violating any provision of this Article or rule promulgated by the Commission; or
 - h. Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.
- (4) In all proceedings under this Article for the revocation or suspension of licenses, the provisions of Chapter 150 of the General Statutes shall be applicable.

- (5) At such time as the Commission finds it necessary it may bring an action in the name of the State in the court of the county in which the place of business is located against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper; provided, that before any such action is brought the Commission shall give the cemetery at least 20 days' notice in writing, stating the alleged violation and giving the cemetery an opportunity within the 20-day period to cure the violation. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, the court shall have the power and jurisdiction to impound and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this Article through or by means of the use of said property and business. The Commission may institute proceedings against the cemetery or its officers, whereafter an examination, pursuant to this Article, a shortage in the care and maintenance trust fund, merchandise trust fund or mausoleum and belowground crypts preconstruction trust fund is discovered, to recover said shortage. (1943, c. 644, s. 17; 1971, c. 1149, s. 8; 1973, c. 732, s. 2; 1975, c. 768, s. 1; 1977, c. 686, ss. 4-6.)

Editor's Note. — The 1977 amendment, in subdivision (3), substituted "where the licensee in performing or attempting to perform any of the acts specified in this Article has been guilty of" for "upon a finding of fact showing that the licensee has either failed to" at the end of the introductory language, added "Failing to" to the beginning of paragraphs a, b, and c, inserted

"trust fund, merchandise trust fund, or preconstruction trust" in paragraph c, rewrote paragraph d, and added paragraphs e through h. In subdivision (5), the amendment deleted "licensed" preceding "place of business" in the first sentence and inserted "merchandise trust fund or mausoleum and belowground crypts preconstruction trust fund" in the last sentence.

§ 65-54. Annual budget of Commission; collection of funds for operation.

— The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and any other source provided in this Article. On or before July 1 of each year, each licensed cemetery will pay a license fee of one hundred dollars (\$100.00) per year; and in addition, a fee for each grave space, niche, mausoleum crypt deeded, and preneed cemetery merchandise contract for vaults, preconstructed belowground crypts, preconstructed mausoleum crypts, and memorials to be set by the Commission each year in order to defray the expenses of the Commission as set forth in the budget. Said additional fees shall not exceed seventy-five cents (75¢) per grave space, niche, and mausoleum crypt deeded, and three dollars (\$3.00) per item in each preneed cemetery merchandise contract for vaults, preconstructed belowground crypts, preconstructed mausoleum crypts and memorials. (1975, c. 768, s. 1; 1977, c. 686, s. 7.)

Editor's Note. — The 1977 amendment substituted "source" for "sources" in the first sentence, inserted "preconstructed" preceding

"belowground crypts" and "preconstructed mausoleum crypts" in the second sentence, and added the third sentence.

§ 65-55. License; cemetery company. — (a) No legal entity shall engage in the business of operating a cemetery company except as authorized by this Article and without first obtaining a license from the Commission.

(b) Any legal entity wishing to establish a cemetery shall file a written application for authority with the Commission on forms provided by the Commission.

(c) Upon receipt of the application and filing fee of four hundred dollars (\$400.00), the Commission shall cause an investigation to be made to establish the following criteria for approval of such application:

- (1) The creation of a legal entity to conduct cemetery business, and the proposed financial structure.
 - (2) A perpetual care trust fund agreement, with an initial deposit of not less than fifteen thousand dollars (\$15,000) and with bank cashier's check or certified check attached for such amount and payable to such trustee, with said trust executed by applicant and accepted by the trustee, conditioned only upon whether the application is approved.
 - (3) A plat of the land to be used for a cemetery, showing county, city and/or township, and names of roads and access streets or ways.
 - (4) Designation by the legal entity wishing to establish a cemetery of a general manager who shall be a person of good moral character, having had no less than one year's experience in cemeteries.
 - (5) Development plans sufficient to insure the community that the cemetery will provide adequate cemetery services, and the property is suitable for use as a cemetery.
- (d) The Commission, after receipt of the investigating report, shall grant or refuse to grant the authority to organize a cemetery based upon the criteria set forth in G.S. 65-55(c).

(e) If the Commission intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and a place for a hearing before the Commission and a summary statement of the reasons for the proposed denial. The notice of intent shall be mailed by certified mail to the applicant at the address stated in the application at least 15 days prior to the scheduled hearing date. The applicant shall pay the costs of this hearing as assessed by the Commission unless the applicant notifies the Commission by certified mail at least five days prior to the scheduled hearing date that a hearing is waived. Any appeals from the Commission's decision shall be to the court having jurisdiction of the applicant or the Commission.

(f) If the Commission intends to grant the authority, it shall give written notice that the authority to organize a cemetery has been granted and that a license to operate will be issued upon the completion of the following:

- (1) Establishment of the care and maintenance trust fund and receipt by the Commission of a certificate from the trust company, certifying receipt of the initial deposit required under this Article.
- (2) Full development, ready for burial, of not less than two acres including a completed paved road from a public roadway to said developed section, certified by inspection of the Commission or its representative.
- (3) A description, by metes and bounds, of the acreage tract of such proposed cemetery, together with evidence, by title insurance policy or by certificate of an attorney-at-law, certifying that the applicant is the owner in fee simple of such tract of land, which must contain not less than 30 acres, and that the title to not less than 30 acres is free and clear of all encumbrances. In counties with a population of less than 35,000 population according to the latest federal decennial census the tract need be only 15 acres.
- (4) A plat of the cemetery showing the number and location of all lots surveyed and permanently staked for sale. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9; 1975, c. 768, s. 1; 1977, c. 686, s. 8.)

Editor's Note. — The 1977 amendment, in subsection (d), substituted "investigation report" for "investigating report" and added "based upon the criteria set forth in G.S. 65-55(c)" to the end of the subsection.

§ 65-56. Existing companies; effect of Article. — Existing cemetery companies at the time of the adoption of this Chapter shall continue in full force and effect and be granted a license but shall hereafter be operated in accordance with the provisions of Article 9 of this Chapter. (1975, c. 768, s. 1.)

§ 65-57. Licenses for sales organizations, management organizations and brokers. — (a) No legal entity shall engage in the business of a cemetery sales organization, a cemetery management organization or a cemetery broker except as authorized by this Article, and without first obtaining a license from the Commission.

(b) Any legal entity wishing to establish and operate the business of a cemetery sales organization, a cemetery management organization or a cemetery broker shall file a written application for authority with the Commission on forms provided by the Commission which must contain such of the following documents and information as may be required by the Commission:

- (1) The appointment of a North Carolina resident to receive service of any lawful process in any noncriminal proceedings arising under this Chapter against the applicant, its principal owners, principal stockholders, directors and general manager or their personal representatives.
- (2) The states or other jurisdictions in which the applicant presently is conducting the business activity applied for or other similar businesses and any adverse order, judgment or decree entered against the applicant in each jurisdiction or by any court.
- (3) The applicant's name, address and the form, date and jurisdiction of the organization and the address of each of its offices within or without this State.
- (4) The name, address, principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions.
- (5) Copies of the articles of incorporation or articles of partnership or joint venture agreement or other instrument establishing the legal entity of the applicant.

(c) The application shall be accompanied by an initial filing fee of four hundred dollars (\$400.00) for cemetery sales organization and cemetery management organization and an initial filing fee of two hundred dollars (\$200.00) for a cemetery broker. If ninety percent (90%) or more of the applicant is owned by an existing cemetery company operating under the North Carolina Cemetery Act, then the initial filing fee shall be one half of the sums set out herein. On or before July 1 of each year, each licensed cemetery sales organization, cemetery management organization, or cemetery broker shall pay a license renewal fee of one hundred dollars (\$100.00) per year.

(d) Upon receipt of the application and filing fee, the Commission shall cause an investigation to be made of the legal entity to conduct the business applied for and the qualification of said legal entity to do business in North Carolina.

(e) The Commission, after receipt of the investigation report, shall grant or refuse to grant the authority to organize the organization applied for after it determines that the applicant possesses good character and general fitness or, in the case of a business association, employs and is directed by personnel of good character and general fitness.

(f) If the Commission intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and a place for hearing before the Commission and a summary statement of the reasons for the proposed denial. The notice of intent shall be mailed by certified mail to the applicant at the address stated in the application at least 15 days prior to the scheduled hearing date. Any appeals from the Commission's decision shall be to the court having jurisdiction of the applicant, or in the event of an out-of-state applicant, then to the court having jurisdiction of the Commission.

(g) If the Commission intends to grant the authority, it shall give written notice that the authority to organize the business applied for has been granted and that a license to operate will be issued upon presentment to the Commission of a statement of employment between the applicant and the cemetery or cemeteries to be serviced thereby.

(h) Any person or any cemetery sales organization or any cemetery management organization or any cemetery broker violating the provisions of this section is guilty of a misdemeanor, punishable as provided in G.S. 14-3 and shall be subject to revocation of the license to operate. (1975, c. 768, s. 1; 1977, c. 686, ss. 9, 10.)

Editor's Note. — The 1977 amendment added the third sentence to subsection (c) and added the language beginning "after it determines that

the applicant possesses good character" to the end of subsection (e).

§ 65-58. Licenses for persons selling preneed grave space. — (a) No person shall offer to sell preneed grave spaces, mausoleum crypts, niches, memorials, vaults or any other preneed cemetery merchandise or services under any plan authorized for any cemetery, cemetery sales group, or cemetery management group, before obtaining a license from the Commission.

(b) Persons wishing to obtain a license shall file a written application with the Commission on forms provided by the Commission. The Commission may require such information and documents as it deems necessary to protect the public interest.

(c) The application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to cover the expenses of processing and investigation. After processing and investigation the Commission shall grant, or refuse to grant, the license applied for. The annual license fee shall be set by the Commission but shall not exceed ten dollars (\$10.00).

(d) If the Commission refuses to grant the license applied for, it shall give written notice to the applicant. The notice shall state a time and a place for hearing before the Commission, and a summary statement of the reasons for the refusal to grant the license. The notice shall be mailed by registered mail or certified mail to the applicant at the address stated in the application at least 30 days prior to the scheduled hearing date.

(e) If the Commission intends to grant the license, it shall give written notice that the license will be issued upon presentment to the Commission of a duly executed statement of employment between the applicant and the cemetery or cemeteries to be serviced thereby.

(f) The provisions of Article 4 of Chapter 150A of the General Statutes of North Carolina relating to "Judicial Review" shall apply to appeals or petitions for judicial review by any person or persons aggrieved by an order or decision of the Commission.

(g) Repealed by Session Laws 1977, c. 686, s. 12. (1943, c. 644, s. 15; 1967, c. 1009, s. 14; 1975, c. 768, s. 1; 1977, c. 686, ss. 11, 12.)

Editor's Note. — The 1977 amendment corrected a mistake in the third sentence of

subsection (c) by substituting "set" for "sent" and deleted subsection (g), which read: "The

provisions of this Article 9 shall not apply to persons holding a certificate under G.S. 65-36.1 through 65.36.8."

§ 65-59. Application for change of control; filing fee. — In any case where a person, a group of persons, or a corporation proposes to purchase or acquire control of an existing cemetery company either by purchasing the outstanding capital stock of any cemetery company, or the interest of the owner or owners, and thereby to change the control of said cemetery company, such person shall first make application on [a] form supplied by the Commission for a certificate of approval of such proposed change of control of said cemetery company. The application shall contain the name and address of the proposed new owners and the said Commission shall issue said certificate of approval only after it has become satisfied that the proposed new owners are qualified by character, experience and financial responsibility to control and operate the said cemetery in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. Such application for a purchase or change of control must be completed and accompanied by an initial filing fee of one hundred dollars (\$100.00) to cover examination provided in G.S. 65-53(2) if required, and if records are in order, certificate of approval shall be issued. (1975, c. 768, s. 1.)

§ 65-60. Records. — A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial, name of the person buried, together with lot, plot, and space in which such burial was made therein. All sales, trust funds, accounting records, and all other records of the licensee shall be available at the licensee's principal place of business in this State and shall be readily available at all reasonable times for examination by an authorized representative of the Commission. (1975, c. 768, s. 1.)

§ 65-60.1. Trustees; qualifications; examination of records; enforcement. — (a) The term "corporate trustee" as used in this Article shall mean either a bank or trust company authorized to do business in North Carolina under the supervision of the Commissioner of Banks or any other corporate entity; provided that any corporate entity other than a bank or trust company which acts as trustee under this Article shall first be approved by the Cemetery Commission and shall be subject to supervision by the Cemetery Commission as provided herein.

(b) Any corporate entity, other than a bank or trust company, which desires to act as trustee for cemetery funds under this Article shall make application to the Commission for approval. The Commission shall approve the trustee when it has become satisfied that:

- (1) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others.
- (2) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.
- (3) The applicant will act as trustee for cemetery funds which will exceed five hundred thousand dollars (\$500,000) in the aggregate.
- (4) The applicant is authorized to do business in North Carolina and has adequate facilities to perform its duties as trustee.

(c) Any trustee under this Article, other than a bank or trust company under the supervision of the Commissioner of Banks, shall maintain records relative

to cemetery trust funds as the Commission may by regulation prescribe. The records shall be available at the trustee's place of business in North Carolina and shall be audited annually by the State Auditor and shall be available at all reasonable times for examination by a representative of the Commission.

(d) Whenever it appears that an officer, director, or employee of a trustee, other than a bank or trust company, is dishonest, incompetent, or reckless in the management of a cemetery trust fund, the Commission may bring an action in the courts to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court. (1977, c. 686, s. 15.)

§ 65-61. Required trust fund for care and maintenance; remedy of Commission for noncompliance. — No cemetery company shall be permitted to establish, or operate if already established, a cemetery unless provision is made for the future care and maintenance of such cemetery by establishing a trust fund and designating a corporate trustee to administer said fund in accordance with a written trust agreement. If any cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this Article, the Commission, after reasonable notice, shall proceed to enforce compliance under the powers vested in it under this Article; provided any nonprofit cemetery corporation, incorporated and engaged in the cemetery business continuously since and prior to 1915 and whose current trust assets exceed seven hundred fifty thousand dollars (\$750,000) shall not be required to designate a corporate trustee. The trust fund agreement shall contain and include the following: name, location, and address of both the licensee and the trustee showing the date of agreement together with the amounts required deposited as stated in this Article. No person shall withdraw or transfer any portion of the corpus of the care and maintenance trust fund without first obtaining written consent from the Commission. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9; 1975, c. 768, s. 1; 1977, c. 686, s. 13.)

Editor's Note. — The 1977 amendment substituted "unless provision is made" for "without providing" and the language beginning "by establishing a trust fund" for "for which a trust fund shall be established to be known as 'the care and maintenance trust fund of (here use name of licensee)'" in the first sentence.

§ 65-62. Individual contracts for care and maintenance. — At the time of making a sale or receiving the initial deposit hereunder, the cemetery company shall deliver to the person to whom such sale is made, or who makes such deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, for reasonable costs of administering such care and maintenance and for reasonable costs of administering the trust fund. (1975, c. 768, s. 1.)

§ 65-63. Requirements for advertising of perpetual care fund. — No such cemetery shall hereafter cause or permit advertising of perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in said funds shall be equal to not less than twenty dollars (\$20.00) per grave space and niche and forty dollars (\$40.00) per mausoleum crypt sold, said sum to be deposited in perpetual care fund as provided in G.S. 65-61 except as provided in G.S. 65-64. (1943, c. 644, s. 5; 1957, c. 529, s. 1; 1967, c. 1009, s. 3; 1971, c. 1149, s. 3; 1975, c. 768, s. 1.)

§ 65-64. Deposits to perpetual care fund. — (a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands not later than 10 days following the close of the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring such payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a penalty of one dollar (\$1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36-47. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the said net income is not sufficient to pay such fees and other expenses, the same shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then said cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to ten dollars (\$10.00) per space for all spaces either previously sold or contracted for sale in said cemetery at the time of conversion or twenty-five thousand dollars (\$25,000), whichever sum is greater.

(c) Each cemetery hereinafter established shall create a care and maintenance trust fund depositing therein an initial deposit of not less than fifteen thousand dollars (\$15,000) and submit proof thereof to the Commission prior to offering for sale any burial rights in grave spaces, niches or crypts.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of said burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of said burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery heretofore or hereafter established shall amount to one hundred fifty thousand dollars (\$150,000), anything in this Article to the contrary notwithstanding, the cemetery may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund which shall be an irrevocable trust and designated as Perpetual Care Trust Fund "A" and invested by trustee as directed by the cemetery, but may not be invested in another cemetery, and said deposits shall be not less than twenty dollars (\$20.00) per grave space and niche and forty dollars (\$40.00) per mausoleum crypt space.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund "A." (1943, c. 644, s. 10; 1957, c. 529, s. 4; 1967, c. 1009, s. 10; 1971, c. 1149, s. 5; 1975, c. 768, s. 1; 1977, c. 686, s. 14.)

Editor's Note. — The 1977 amendment designated the provisions of the former first through sixth paragraphs as subsections (e), (f), (a), (b), (c), and (d), respectively. In present subsection (a), the amendment substituted "final payment is" for "payments were" in the first sentence, added the present second sentence,

and added the language beginning "except that such investments" to the end of the present third sentence. In present subsection (e), the amendment added "and niche and forty dollars (\$40.00) per mausoleum crypt space" to the end of the subsection.

§ 65-65. Trust fund; financial reports. — Within 60 days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care fund on forms provided by the Commission. However, the Commission may require the trustee to make such additional financial reports as it may deem advisable. (1975, c. 768, s. 1.)

§ 65-66. Receipts from sale of personal property or services; trust fund; penalties. — (a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them, or for whom they are so purchased, unless such person or legal entity holds, controls or manages said funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities licensed under this Chapter that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a certificate under G.S. 65-36.1 through 65-36.8.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of, a deceased human being wherein the use of the personal property or the furnishing of the services is not immediately requested or required, shall deposit proceeds received on the contract as follows:

- (1) Into a trust fund administered by a corporate trustee in accordance with a written trust instrument.
- (2) Seventy-five percent (75%) of all proceeds received on such contracts shall be deposited until the amount deposited equals seventy-five percent (75%) of the actual sale price of the property or services so sold.
- (3) The deposit herein required shall be made into the trust fund so established on or before the tenth day of the month following receipt by the cemetery company or other entity from the purchaser.
- (4) Each deposit into any such trust fund shall be identified by the cemetery company or other entity by furnishing the trustee with the name of the purchaser, the amount of the actual sales price and the amount of money required to be deposited, and with the initial deposit a statement of or a copy of the contract for the personal property and services to be furnished by the cemetery company thereunder. Nothing herein contained shall prohibit the trustee from commingling the deposits in any such trust fund for purposes of the management thereof and the investment of funds therein.
- (5) The trust shall be operated in conformity with Chapter 36, North Carolina General Statutes, with respect to the nature and character of the trustee.
- (6) In lieu of the deposits required herein, the cemetery company or other entity may post with the Commission a good and sufficient performance

bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made by purchasers who have not received the purchased property and services.

- (c) (1) The funds shall be held in trust both as to principal and income earned thereon and shall remain intact, except that the cost of the operation of the trust may be deducted from the income earned thereon, until delivery of the property is made or the services are performed by the cemetery company or other entity. Upon delivery of the property or performance of the services, the cemetery company or other entity and the purchaser shall certify same to the trustee. Upon such certification, the amount of money on deposit to the credit of that particular contract, including principal and income earned thereon, shall be forthwith paid to the cemetery company or other entity. The trustee may rely upon all such certifications herein required to be made and shall not be liable to anyone for such reliance.
- (2) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income, if any, earned thereon by the trust fund.

(d) At any time prior to delivery of personal property or performance of services, a purchaser may make written demand for a refund of the amount deposited in trust to the credit of such purchaser, and within 30 days of receipt of such written demand the trustee shall refund to such purchaser the amount on deposit to his credit together with all interest, dividends, increases or accretions earned on such fund.

(e) Every year after September 1, 1975, the trustee shall, within 75 days after the end of the calendar year, file a financial report of the merchandise trust fund with the Commission, setting forth the principal thereof, the investments and payments made, and the income earned and disbursed; provided, however, that the Commission may require the trustee to make such additional financial reports as it may deem advisable.

(f) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of such examination shall be filed in the office of the Commission. Any persons or entities being examined shall produce the records of the company needed for such examination.

(g) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(h) Any cemetery company or other entity, as defined in this section, failing to make required contributions to the trust fund shall be guilty of a misdemeanor punishable as provided in G.S. 14-3, and each violation of this section shall constitute a separate offense.

(i) Nothing in G.S. 65-66 and subsections thereunder shall apply to persons or legal entities holding licenses or certificates under G.S. 65-36.1 and 65-36.8 when performing services or selling items authorized by said sections.

(j) If any report is not received within the time stipulated herein, the Commission may levy and collect a penalty of twenty-five dollars (\$25.00) per day for each day of delinquency. (1975, c. 768, s. 1.)

§ 65-67. Applications for license. — Applications for renewal license must be submitted on or before July 1 each and every year in the case of an existing

cemetery company. Before any sale of cemetery property in the case of a new cemetery company or a change of ownership or control as indicated in G.S. 65-59, an application for license must be submitted and license issued. (1975, c. 768, s. 1.)

§ 65-68. License not assignable or transferable. — No license issued under G.S. 65-67 shall be transferable or assignable and no licensee shall develop or operate any cemetery authorized by this Article under any name or at any location other than that contained in the application for such license. (1975, c. 768, s. 1.)

§ 65-69. Minimum acreage; sale or disposition of cemetery lands. — (a) Each licensee shall set aside a minimum of 30 acres of land for use by said licensee as a cemetery, and shall not sell, mortgage, lease or encumber the same.

(b) The fee simple title, or lesser estate, in any lands owned by licensee and dedicated for use by it as a cemetery, which are contiguous, adjoining, or adjacent to the minimum of 30 acres described in subsection (a), may be sold, conveyed, or disposed of, or any part thereof, by the licensee, for use by the new owner for other purposes than as a cemetery; provided that no bodies have been previously interred therein; and provided further, that any and all titles, interests, or burial rights which may have been sold or contracted to be sold in such lands which are the subject of such sale shall be conveyed to and revested in the licensee prior to consummation of any such sale, conveyance or disposition.

(c) Any licensee may convey and transfer to a municipality or county its real and personal property together with moneys deposited with the trustee; provided said municipality or county will accept responsibility for maintenance thereof and prior written approval of the Commission is first obtained.

(d) The provisions of subsections (a) and (b) relating to a requirement for minimum acreage shall not apply to those cemeteries licensed by the Commission on or before July 1, 1967, which own or control a total of less than 30 acres of land; provided that such cemeteries shall not dispose of any of such lands. (1975, c. 768, s. 1.)

§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirement. —

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first such sale. The construction of such mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed one year, may be granted by the Commission for good reasons shown if a section of a mausoleum or a bank of belowground crypts shall contain more than 500 crypts.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust fund. The trust fund shall be administered and operated in the same manner as the merchandise trust fund provided for in G.S. 65-66 and shall be exclusive of the merchandise trust fund or such other trust funds that may be required by law. The personal representative of any purchaser of such space who dies before completion of construction shall be entitled to a refund of all moneys paid for such space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost)

to be deposited to the preconstruction trust fund shall be computed as to said section or bank of crypts and such fund payments must be made within 30 days of receipt by the cemetery company or its agent of each payment. The fund portion of each such payment shall be computed by dividing the cost of the project plus twenty percent (20%) of said cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

$$\begin{array}{ll} \text{Cost plus 20 percent} \div & \text{= Cost per unit} \\ \text{Number of crypts} & \\ \text{Cost per unit} \div & \text{= Percentage} \\ \text{Contract sales price} & \\ \text{Percentage x payment received} & \text{= Deposit required to} \\ & \text{preconstruction fund.} \end{array}$$

(d) The cemetery company shall be entitled to withdraw the funds from said preconstruction trust fund only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If said mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the trustee shall contract for and cause said project to be completed and paid therefor from the trust funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction fund the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission. (1975, c. 768, s. 1; 1977, c. 686, ss. 16, 17.)

Editor's Note. — The 1977 amendment deleted "by written instrument and administered by a corporate trustee and operated in conformity with G.S. 65-66" from the

end of the first sentence of subsection (b), rewrote the second sentence of subsection (b), and rewrote subsection (d).

§ 65-71. Penalties. — (a) A person violating any provisions of this Article, or order or rule promulgated under the provisions thereof, or of any license issued by the Commission, shall be guilty of a misdemeanor and fined and imprisoned, or both, in the discretion of the court.

(b) The officers and directors or persons occupying similar status or performing similar functions of any cemetery company, cemetery sales organization, cemetery management organization or cemetery broker, as defined in this Chapter, failing to make required contributions to the care and maintenance trust fund and any other trust fund of escrow account provided herein, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished in the manner prescribed by law. (1943, c. 644, s. 14; 1967, c. 1009, s. 13; 1975, c. 768, s. 1.)

§ 65-72. Burial without regard to race or color. — (a) It shall be the public policy of the State that all cemetery companies or other legal entities conducting or maintaining public or private cemeteries shall sell to all applicants and bury all deceased human beings on equal terms without regard to race or color. Anything contrary hereto is void and of no legal effect. Bylaws, rules and regulations, contracts, deeds, etc., may permit designation of parts of cemeteries

or burial grounds for the specific use of persons whose religious code required isolation. Any program offering free burial rights to veterans or any other person or group of persons shall not be conditioned by any requirement to purchase additional burial rights or merchandise.

(b) Any cemetery company or other legal entity violating the provisions of this section shall be guilty of a misdemeanor, punishable as provided in G.S. 14-3, and each violation of this section shall constitute a separate offense. (1975, c. 768, s. 1.)

Chapter 66.

Commerce and Business.

Article 1.

Regulation and Inspection.

Sec.

- 66-11. Dealing in certain metals regulated; purchasing from minors; violations of section misdemeanor.
 66-11.1. Transportation of copper.

Article 10.

Fair Trade.

66-50 to 66-57. [Repealed.]

Article 11.

Government in Business.

- 66-58. Sale of merchandise by governmental units.

Article 14.

Business under Assumed Name Regulated.

- 66-68. Certificate to be filed; contents; exemption of certain certified public accountants.

Article 17.

Closing-Out Sales.

Sec.

- 66-84. Counties within Article.

Article 18.

Labeling of Household Cleaners.

- 66-89 to 66-93. [Reserved.]

Article 19.

Business Opportunity Sales.

- 66-94. Definition.
 66-95. Required disclosure statement.
 66-96. Bond or trust account required.
 66-97. Filing with Secretary of State.
 66-98. Prohibited acts.
 66-99. Contracts to be in writing; form; provisions.
 66-100. Remedies.

ARTICLE 1.

Regulation and Inspection.

§ 66-11. Dealing in certain metals regulated; purchasing from minors; violations of section misdemeanor. — Every person, firm, or corporation buying railroad brasses or any composition metal specially used in the operation of trains, or brasses, composition metals, or copper or aluminum of the kind or quality used by manufacturing or power plants or by the communication or electric utility industry, or any copper, brass or bronze of whatever kind or description, shall keep a register and shall insert therein a true and accurate record of each purchase, showing the name, address and driver's license number, the make and type of vehicle hauling said scrap, together with the license plate number thereon, of the person from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon such metal. Such records shall be kept at the place of business of the person, firm or corporation and shall be open to inspection by any law officer. The register shall be at all times open to the inspection of the public. Any person or dealer buying or selling metals without complying with this section shall be guilty of a misdemeanor; and any person making a false entry in such register shall be guilty of a misdemeanor. Every person, firm, or corporation who shall buy or receive any such metals from persons under 18 years old, or who shall buy or receive any such metals after the same have been broken up and the marks or brands obliterated, shall be guilty of a misdemeanor; and every person buying, receiving or selling, or offering for sale metals broken into small pieces, or so broken as to obliterate the marks or brands, shall be prima facie presumed to have received such metals knowing the same to have been stolen. (1907, c. 464; 1909, c. 855, s. 1; C. S., s. 5091; 1967, c. 792; 1971, c. 1231, s. 1; 1975, c. 182, s. 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, inserted "or electric utility" near the middle of the first sentence.

§ 66-11.1. Transportation of copper. — It shall be unlawful for any person to transport or have in his possession on highways of this State, in any vehicle other than a vehicle used in the ordinary course of business for the purpose of transporting such copper, an amount of such copper of an aggregate weight of more than 25 pounds, unless such person shall have in his possession

- (1) A bill of sale pertaining to such copper signed by (i) a holder of a sales and use tax registration number from the North Carolina Department of Revenue; or (ii) an authorized wholesaler engaged in the sale of such copper; or (iii) a registered dealer in scrap metals; or (iv) a seller of antiques or objects of art; or
- (2) In the event the person from whom such copper was purchased was other than one of the above enumerated persons or firms, a certificate of origin signed by the sheriff, or his designated representative, of the county in which the purchase was made.

Such bill of sale or certificate of origin shall clearly identify the material to which it applies and show thereon the name and address of the seller, license plate of the vehicle in which such material is delivered to the purchaser, identified by license number, year and state of issue, the name and address of the purchaser, the date of sale, and the type and amount of such copper purchased.

Any person violating the provisions of this subsection [section] shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500.00) or be imprisoned for not more than six months. (1975, c. 182, s. 1.)

Editor's Note. — Session Laws 1975, c. 182, s. 4, makes the act effective July 1, 1975.

ARTICLE 9.

Collection of Accounts.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 66-41. Permit from Commissioner of Insurance; misdemeanor to do business without permit; penalty for violation; exception.

Cited in State ex rel. Edmisten v. J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977).

§ 66-42. Definition of delinquent collection agency and collection agency business.

Quoted in State ex rel. Edmisten v. J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977).

§ 66-49. All collection agencies to identify themselves in correspondence and street location.

Cited in State ex rel. Edmisten v. J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977).

ARTICLE 9A.*Private Detectives.*

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

ARTICLE 9B.*Motor Clubs and Associations.*

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

ARTICLE 10.

Fair Trade.

§§ 66-50 to 66-57: Repealed by Session Laws 1975, c. 172, effective July 1, 1975.

ARTICLE 11.

*Government in Business.***§ 66-58. Sale of merchandise by governmental units.**

(b) The provisions of subsection (a) of this section shall not apply to:

- (1) Counties and municipalities.
- (2) The Department of Human Resources or the Department of Agriculture for the sale of serums, vaccines, and other like products.
- (3) The Department of Administration, except that said agency shall not exceed the authority granted in the act creating the agency.
- (4) The State hospitals for the insane.
- (5) The Department of Human Resources.
- (6) The North Carolina School for the Blind at Raleigh.
- (7) The North Carolina School for the Deaf at Morganton.
- (8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State College, and the other schools and colleges for higher education maintained or supported by the State, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.
- (9) The Department of Natural Resources and Community Development, except that said Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction.
- (10) Child-caring institutions or orphanages receiving State aid.
- (11) Highlands School in Macon County.
- (12) The North Carolina State Fair.
- (13) Rural electric memberships corporations.
- (13a) State Farm Operations Commission.
- (13b) The Department of Agriculture with regard to its lessees at farmers' markets operated by the Department.
- (14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof

by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided such leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

- (15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for such tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies.

- (16) Laundry services performed by the Department of Corrections may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Corrections, or for which services have been contracted or applied for in writing, as of May 22, 1973.

Such services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by such institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by such institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Corrections, be processed by a dry-cleaning method.

- (c) The provisions of subsection (a) shall not prohibit:

- (1) The sale of products of experiment stations or test farms.
- (2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.
- (3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of such stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students and their immediate families, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with

stores operated in the communities surrounding the campuses of the University of North Carolina.

- (4) The operation of lunch counters by the Department of Human Resources as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.
 - (5) The operation of concession stands in the State Capitol during the sessions of the legislature.
 - (6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.
 - (7) The operation by penal, correctional or institutions for the care of the blind, or mentally or physically defective, or by the State Department of Agriculture, of dining rooms for the inmates or patients or members of the staff while on duty and for the accommodation of persons visiting such inmates or patients, and other bona fide visitors.
 - (8) The sale by the Department of Agriculture of livestock, poultry and publications in keeping with its present livestock and farm program.
 - (9) The operation by the public schools of school cafeterias.
 - (10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.
 - (11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.
 - (12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.
 - (13) The operation by the Department of Correction of forestry management programs on state-owned lands, including the sale on the open market of timber cut as a part of such management program.
 - (14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.
 - (15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.
- (f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Department of Correction of facilities for the manufacture of any product or the providing of any service pursuant to G.S. 148-70 not regulated by the provisions of subsection (c) hereof, shall be subject to the prior approval of the Advisory Budget Commission, with biennial review by the General Assembly, at the beginning of each fiscal year commencing after October 1, 1975. The Department of Correction shall file with the Director of the Budget quarterly reports detailing prison enterprise operations in such a format as shall be required by the Advisory Budget Commission. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1939, c. 122; 1941, c. 36; 1951, c. 1090, s. 1; 1957, c. 349, ss. 6, 10; 1967, c. 996, s. 13; 1973, c. 476, ss. 48, 128, 143; c. 671, s. 1; c. 965; c. 1262, s. 86; c. 1294; c. 1457, s. 7; 1975, c. 730, ss. 2-5; c. 840; c. 879, s. 46; 1977, cc. 355, 715; c. 771, s. 4.)

Local Modification. — Columbus: 1977, c. 850.

Editor's Note. —

The first 1975 amendment, effective Oct. 1, 1975, added subdivision (b)(15), which was formerly § 148-8, and inserted "for the State and

local governments" near the end of the first paragraph of that subdivision, and added subdivision (b)(16), which was formerly § 148-8.1, and subdivisions (c)(13), (c)(14), (c)(15) and subsection (f).

The second 1975 amendment inserted "to other campus stores" in the second sentence of subdivision (c)(3).

The third 1975 amendment, effective July 1, 1975, substituted "Department of Administration" for "Division of Purchase and Contract" in subsections (b)(3) and (b)(14).

The first 1977 amendment added subdivision (13b) of subsection (b).

The second 1977 amendment added the language beginning "nor to the comprehensive student health services" to the end of subdivision (8) of subsection (b).

The third 1977 amendment substituted "Natural Resources and Community

Development" for "Natural and Economic Resources" in subdivision (9) of subsection (b).

Session Laws 1977, c. 599, provides in part: "G.S. 66-58(c)(9) is hereby declared to be not in conflict with the provisions of the second paragraph of G.S. 115-133."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendments, only subsections (b), (c) and (f) are set out.

ARTICLE 14.

Business under Assumed Name Regulated.

§ 66-68. Certificate to be filed; contents; exemption of certain certified public accountants. — (a) Unless exempt under subsection (e) hereof, before any person or partnership other than a limited partnership engages in business in any county in this State under an assumed name or under any designation, name or style other than the real name of the owner or owners thereof, or before a corporation engages in business in any county other than under its corporate name, such person, partnership, or corporation must file in the office of the register of deeds of such county a certificate giving the following information:

- (1) The name under which the business is to be conducted;
- (2) The name and address of the owner, or if there is more than one owner, the name and address of each.

(e) Any partnership engaged in the practice of certified public accountancy in this State shall be exempt from the requirements of this section if it shall file annually with the North Carolina State Board of Certified Public Accountant Examiners, or at such intervals as shall be designated from time to time by such Board, a listing of the names and addresses of its partners (including both residents and nonresidents of this State); and such listing shall be open to public inspection during normal working hours. (1913, c. 77, s. 1; C. S., s. 3288; 1951, c. 381, ss. 3, 7; 1967, c. 823, s. 28; 1977, c. 384.)

Editor's Note. —

The 1977 amendment added "Unless exempt under subsection (e) hereof," at the beginning of subsection (a) and added subsection (e).

As the rest of the section was not changed by the amendment, only subsections (a) and (e) are set out.

ARTICLE 17.

Closing-Out Sales.

§ 66-84. Counties within Article. — This Article shall apply only to the following counties: Ashe, Bertie, Buncombe, Burke, Cabarrus, Catawba, Cleveland, Columbus, Craven, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Gaston, Graham, Guilford, Halifax, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Lee, McDowell, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Stanly, Surry, Swain, Transylvania, Union,

Wake and Wayne. (1957, c. 1058, ss. 10½, 10¾; 1959, cc. 928, 1089; c. 1251, s. 1; c. 1287; 1963, cc. 205, 738; 1965, cc. 96, 306, 374; 1967, cc. 347, 476, 514; 1969, c. 502; 1973, c. 1072; 1975, cc. 60, 440.)

Editor's Note. —

The first 1975 amendment inserted Rowan, and the second 1975 amendment inserted Johnston, in the list of counties.

ARTICLE 18.

Labeling of Household Cleaners.

§§ 66-89 to 66-93: Reserved for future codification purposes.

ARTICLE 19.

Business Opportunity Sales.

§ 66-94. Definition. — For purposes of this Article, “business opportunity” means the sale or lease of any products, equipment, supplies or services which are sold to the purchaser for the purpose of enabling the purchaser to start a business, and in which the seller represents:

- (1) That the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, or currency-operated amusement machines or devices, on premises [neither] owned nor leased by the purchaser or seller; or
- (2) That it will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part, the supplies, services or chattels sold to the purchaser; or
- (3) The seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity; or that the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity; or
- (4) That upon payment by the purchaser of a fee or sum of money which exceeds fifty dollars (\$50.00) to the seller, the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity, provided that this subsection shall not apply to the sale of a marketing program made in conjunction with the licensing of a registered trademark or service mark.

Provided, that “business opportunity” does not include the sale of an on-going business when the owner of that business sells and intends to sell only that one business opportunity; nor does it include the not-for-profit sale of sales demonstration equipment, materials, or samples, for a total price of one hundred dollars (\$100.00) or less. (1977, c. 884, s. 1.)

Editor's Note. — Session Laws 1977, c. 884,

s. 2, makes this Article effective Oct. 1, 1977.

The word “neither,” in brackets, has been inserted by the Editors near the end of subdivision (1).

§ 66-95. Required disclosure statement. — At least 48 hours prior to the time the purchaser signs a business opportunity contract, or at least 48 hours prior to the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document, the cover sheet of which is entitled in at least 10-point bold face capital letters "DISCLOSURES REQUIRED BY NORTH CAROLINA LAW." Under this title shall appear the statement in at least 10-point type that "The State of North Carolina has not reviewed and does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the State. If you have any questions about this investment, see an attorney before you sign a contract or agreement." Nothing except the title and required statement shall appear on the cover sheet. The disclosure document shall contain the following information:

- (1) The name of the seller, whether the seller is doing business as an individual, partnership, or corporation, the names under which the seller has done, is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with purchasers or who takes responsibility for statements made by the seller.
- (2) The names, addresses and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with responsibility for the seller's business activities relating to the sale of business opportunities.
- (3) The length of time the seller has:
 - (a) Sold business opportunities;
 - (b) Sold business opportunities involving the product(s), equipment, supplies or services currently being offered to the purchaser.
- (4) A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser.
- (5) A copy of a current (not older than 13 months) financial statement of the seller, updated to reflect any material changes in the seller's financial condition.
- (6) If training of any type is promised by the seller, the disclosure statement must set forth a complete description of the training and the length of the training.
- (7) If the seller promises services to be performed in connection with the placement of the equipment, product(s) or supplies at various location(s), the disclosure statement must set forth the full nature of those services as well as the nature of the agreements to be made with the owners or managers of these location(s) where the purchaser's equipment, product(s) or supplies will be placed.
- (8) If the business opportunity seller is required to secure a bond or establish a trust deposit pursuant to G.S. 66-96, the document shall state either:
 - a. "As required by North Carolina law, the seller has secured a bond issued by
..... a surety
(name and address of surety company)
company authorized to do business in this State. Before signing a contract to purchase this business opportunity, you should check with the surety company to determine the bond's current status,"
or
 - b. "As required by North Carolina law, the seller has established a trust account
(number of account)

with
 (name and address of bank or savings institution)

Before signing a contract to purchase this business opportunity, you should check with the bank or savings institution to determine the current status of the trust account."

(9) The following statement:

"If the seller fails to deliver the product(s), equipment or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and demand that the contract be cancelled."

(10) If the seller makes any statement concerning sales or earnings, or range of sales or earnings that may be made through this business opportunity, the document must disclose:

- a. the total number of purchasers of business opportunities involving the product(s), equipment, supplies or services being offered who to the seller's knowledge have actually received earnings in the amount or range specified, within three years prior to the date of the disclosure statement.
- b. the total number of purchasers of business opportunities involving the product(s), equipment, supplies or services being offered within three years prior to the date of the disclosure statement. (1977, c. 884, s. 1.)

§ 66-96. Bond or trust account required. — If the business opportunity seller makes any of the representations set forth in G.S. 66-94(3), the seller must either have obtained a surety bond issued by a surety company authorized to do business in this State or have established a trust account with a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the bond or trust account shall be an amount not less than fifty thousand dollars (\$50,000). The bond or trust account shall be in favor of the State of North Carolina. Any person who is damaged by any violation of this Article, or by the seller's breach of the contract for the business opportunity sale or of any obligation arising therefrom may bring an action against the bond or trust account to recover damages suffered; provided, however, that the aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account. (1977, c. 884, s. 1.)

§ 66-97. Filing with Secretary of State. — (a) The seller of every business opportunity shall file with the Secretary of State a copy of the disclosure statement required by G.S. 66-95 prior to placing any advertisement or making any other representations to prospective purchasers in this State, and shall update this filing as any material change in the required information occurs, but no less than annually. If the seller is required by G.S. 66-96 to provide a bond or establish a trust account, he shall contemporaneously file with the Secretary of State a copy of the bond or a copy of the formal notification by the depository that the trust account is established.

(b) Failure to so file shall be a misdemeanor. (1977, c. 884, s. 1.)

§ 66-98. Prohibited acts. — Business opportunity sellers shall not:

- (1) Represent that the business opportunity provides income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential and discloses this data to the prospective purchaser at the time such representations are made;

- (2) Use the trademark, service mark, trade names, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity, unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the sale of the business opportunity;
- (3) Make or authorize the making of any reference to its compliance with this Article in any advertisement or other contact with prospective purchasers. (1977, c. 884, s. 1.)

§ 66-99. Contracts to be in writing; form; provisions. — (a) Every business opportunity contract shall be in writing and a copy shall be given to the purchaser at the time he signs the contract.

(b) Every contract for a business opportunity shall include the following:

- (1) The terms and conditions of payment;
- (2) A full and detailed description of the acts or services that the business opportunity seller undertakes to perform for the purchaser;
- (3) The seller's principal business address and the name and address of its agent in the State of North Carolina authorized to receive service of process;
- (4) The approximate delivery date of any product(s), equipment or supplies the business opportunity seller is to deliver to the purchaser. (1977, c. 884, s. 1.)

§ 66-100. Remedies. — (a) If a business opportunity seller uses any untrue or misleading statements in the sale of a business opportunity, or fails to give the proper disclosures in the manner required by G.S. 66-95, or fails to deliver the equipment, supplies or product(s) necessary to begin substantial operation of the business within 45 days of the delivery date stated in the business opportunity contract, or if the contract does not comply with the requirements of G.S. 66-99, then, within one year of the date of the contract, upon written notice to seller, the purchaser may void the contract and shall be entitled to receive from the business opportunity seller all sums paid to the business opportunity seller. Upon receipt of such sums, the purchaser shall make available to the seller at purchaser's address or at the places at which they are located at the time notice is given, all product(s), equipment or supplies received by the purchaser. Provided, that purchaser shall not be entitled to unjust enrichment by exercising the remedies provided in this subsection.

(b) Any purchaser injured by a violation of this Article or by the business opportunity seller's breach of a contract subject to this Article or any obligation arising therefrom may bring an action for recovery of damages, including reasonable attorneys' fees.

(c) Upon complaint of any person that a business opportunity seller has violated the provisions of this Article, the superior court shall have jurisdiction to enjoin the defendant from further such violations.

(d) The remedies provided herein shall be in addition to any other remedies provided for by law or in equity.

(e) The violation of any provisions of this Article shall constitute an unfair practice under G.S. 75-1.1. (1977, c. 884, s. 1.)

Chapter 67.

Dogs.

Article 1.

Owner's Liability.

Sec.

67-3. Sheep-killing dogs to be killed.

ARTICLE 1.

Owner's Liability.

§ 67-3. Sheep-killing dogs to be killed. — If any person owning or having any dog that kills sheep or other domestic animals, or that kills a human being, upon satisfactory evidence of the same being made before any judge of the district court in the county, and the owner duly notified thereof, shall refuse to kill it, and shall permit such dog to go at liberty, he shall be guilty of a misdemeanor, and fined not more than fifty dollars (\$50.00) or imprisoned not more than 30 days, and the dog may be killed by anyone if found going at large. (1862-3, c. 41, s. 1; 1874-5, c. 108, s. 2; Code, s. 2500; Rev., s. 3304; C. S., s. 1671; 1973, c. 108, s. 24; 1977, c. 597.)

Editor's Notes. —

The 1977 amendment substituted "domestic animals" for "domestic animal" and inserted "or

that kills a human being" near the beginning of the section.

Chapter 68.

Fences and Stock Law.

Article 4.

Stock along the Outer Banks.

Development to remove or confine ponies on Ocracoke Island and Shackleford Banks.

Sec.

68-43. Authority of Secretary of Natural Resources and Community

ARTICLE 4.

Stock along the Outer Banks.

§ 68-43. Authority of Secretary of Natural Resources and Community Development to remove or confine ponies on Ocracoke Island and Shackleford Banks. — Notwithstanding any other provisions of this Article, the Secretary of Natural Resources and Community Development shall have authority to remove or cause to be removed from Ocracoke Island and Shackleford Banks all ponies known as banks ponies or marsh ponies if and when he determines that such action is essential to prevent damage to the island. In the event such a determination is made, the Secretary, in lieu of removing all ponies, may require that they be restricted to a certain area or corralled so as to prevent damage to the island. In the event such action is taken, the Secretary is authorized to take such steps and act through his duly designated employees or such other persons as, in his opinion, he deems necessary and he may accept any assistance provided by or through the National Park Service. (1957, c. 1057, s. 1½; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Chapter 69.

Fire Protection.

Article 1.

Investigation of Fires and Inspection of Premises.

Sec.

- 69-1. Fires investigated; reports; records.
- 69-2. Attorney General to make examination; arrests and prosecution.
- 69-3. Powers of Attorney General in investigations.
- 69-3.1. Failure to comply with summons or subpoena.
- 69-4. Inspection of premises; dangerous material removed.
- 69-5. Deputy investigators.

Sec.

- 69-6. Reports of Attorney General.
- 69-7.1. Insurance company to furnish information.

Article 3A.

Rural Fire Protection Districts.

- 69-25.2. Duties of county board of commissioners regarding conduct of elections; cost of holding.
- 69-25.5. Methods of providing fire protection.
- 69-25.17. Validation of fire protection funds appropriated in providing rescue and ambulance services.

ARTICLE 1.

Investigation of Fires and Inspection of Premises.

§ 69-1. Fires investigated; reports; records. — The Attorney General, through the State Bureau of Investigation, and the chief of the fire department, or chief of police where there is no chief of the fire department, in municipalities and towns, and the county fire marshal and the sheriff of the county and the chief of the rural fire department where such fire occurs outside of a municipality, are hereby authorized to investigate the cause, origin, and circumstances of every fire occurring in such municipalities or counties in which property has been destroyed or damaged, and shall specially make investigation whether the fire was the result of carelessness or design. A preliminary investigation shall be made by the chief of fire department or chief of police, where there is no chief of fire department in municipalities, and by the county fire marshal and the sheriff of the county or the chief of the rural fire department where such fire occurs outside of a municipality, and must be begun within three days, exclusive of Sunday, of the occurrence of the fire, and the Attorney General, through the State Bureau of Investigation, shall have the right to supervise and direct the investigation when he deems it expedient or necessary.

The officer making the investigation of fires shall forthwith notify the Attorney General, and must within one week of the occurrence of the fire furnish to the Attorney General a written statement of all facts relating to the cause and origin of the fire, the kind, value and ownership of the property destroyed, and such other information as is called for by the forms provided by the Attorney General. Departments capable of submitting the required information by the utilization of computers and related equipment, by means of an approved format of standard punch cards, magnetic tapes or an approved telecommunications system, may do so in lieu of the submission of the written statement as provided for in this section. The Attorney General shall keep in his office a record of all reports submitted pursuant to this section. These reports shall at all times be open to public inspection. (1899, c. 58; 1901, c. 387; 1903, c. 719; Rev., s. 4818; C. S., s. 6074; 1943, c. 170; 1969, c. 894; 1977, c. 596, s. 1.)

Editor's Note. — The 1977 amendment divided this section into the first and second paragraphs, and in the first paragraph, substituted "The Attorney General, through the State Bureau of Investigation" for "The Commissioner of Insurance" and inserted "the" preceding "fire department" and "and the chief of the rural fire department" in the first sentence, and inserted "or the chief of the rural fire department" in the second sentence, and substituted "and the Attorney General, through the State Bureau of Investigation" for "and the

Commissioner of Insurance" in the second sentence. In the second paragraph, the amendment substituted "Attorney General" for "Commissioner of Insurance" in one place and for "Commissioner" in two places in the first sentence, deleted "the" preceding "facts relating to the cause" and substituted "forms" for "blanks" in the first sentence, added the present second sentence, rewrote the present third sentence, and substituted "These reports" for "This record" at the beginning of the present fourth sentence.

§ 69-2. Attorney General to make examination; arrests and prosecution. — It is the duty of the Attorney General to examine, or cause examination to be made, into the cause, circumstances, and origin of all fires occurring with the State to which his attention has been called in accordance with the provisions of G.S. 69-1, or by interested parties, by which property is accidentally or unlawfully burned, destroyed, or damaged, whenever in his judgment the evidence is sufficient, and to specially examine and decide whether the fire was the result of carelessness or the act of an incendiary. The Attorney General shall, in person, by deputy or otherwise, fully investigate all circumstances surrounding such fire, and, when in his opinion such proceedings are necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matters as to which an examination is herein required to be made, and shall cause the same to be reduced in writing. If the Attorney General or any deputy appointed to conduct such investigations, is of the opinion that there is evidence to charge any person or persons with the crime of arson, or other willful burning, or fraud in connection with the crime of arson or other willful burning, he may arrest with warrant or cause such person or persons to be arrested, charged with such offense, and prosecuted, and shall furnish to the district attorney of the district all such evidence, together with the names of witnesses and all other information obtained by him, including a copy of all pertinent and material testimony taken in the case. (1899, c. 58, s. 2; 1901, c. 387, s. 2; 1903, c. 719; Rev., s. 4819; C. S., s. 6075; 1943, c. 170; 1955, c. 642, s. 1; 1959, c. 1183; 1973, c. 47, s. 2; 1977, c. 596, s. 2.)

Editor's Note. —

The 1977 amendment substituted "Attorney General" for "Commissioner of Insurance" in

the first sentence and for "Commissioner" in the second and third sentences.

§ 69-3. Powers of Attorney General in investigations. — The Attorney General, or his deputy appointed to conduct such examination, has the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses to testify in relation to any matter which is by provisions of this Article a subject of inquiry and investigation, and may administer oaths and affirmations to persons appearing as witnesses before them. False swearing in any such matter or proceeding is perjury and shall be punished as such. The Attorney General or his deputy has authority at all times of the day or night, in performance of the duties imposed by the provisions of this Article, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same. All investigations held by or under the direction of the Attorney General or his deputy may, in their discretion, be private, and persons other than those required to be present by the provisions of this Article may be excluded from the place where the investigation is held, and witnesses may be kept apart from each other and not allowed to

communicate with each other until they have been examined. (1899, c. 58, s. 3; 1901, c. 387, s. 3; Rev., s. 4820; C. S., s. 6076; 1943, c. 170; 1977, c. 596, s. 2.)

Editor's Note. — The 1977 amendment substituted "Attorney General" for "Commissioner of Insurance" in the first sentence and for "Commissioner" in the third and fourth sentences.

§ 69-3.1. Failure to comply with summons or subpoena. — The failure of a person to comply with a summons or subpoena of the Attorney General or his deputy under G.S. 69-3 shall be brought before a court of record and punished as for contempt in the same manner as if he had failed to appear and testify before said court of record. (1955, c. 642, s. 2; 1977, c. 596, s. 2.)

Editor's Note. — The 1977 amendment substituted "Attorney General" for "Commissioner of Insurance."

§ 69-4. Inspection of premises; dangerous material removed. — The Commissioner of Insurance, or the chief of fire department or chief of police where there is no chief of fire department, or the city or county building inspector, electrical inspector, heating inspector, or fire prevention inspector has the right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises in their jurisdiction. When any of such officers find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such building or premises they shall order the same to be removed or remedied, and this order shall be forthwith complied with by the owner or occupant of such buildings or premises. The owner or occupant may, within twenty-four hours, appeal to the Commissioner of Insurance from the order, and the cause of the complaint shall be at once investigated by his direction, and unless by his authority the order of the officer above named is revoked it remains in force and must be forthwith complied with by the owner or occupant. The Commissioner of Insurance, fire chief, or building inspector, electrical inspector, heating inspector, or fire prevention inspector shall make an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction upon complaint of any person having an interest in such building or premises or property adjacent thereto. The Commissioner may, in person or by deputy, visit any municipality or county and make such inspections alone or in company with the local officer. The Commissioner shall submit annually, as early as consistent with full and accurate preparation, and not later than the first day of June, a detailed report of his official action under this Article, and it shall be embodied in his report to the General Assembly. (1899, c. 58, s. 4; 1901, c. 387, s. 4; 1903, c. 719; Rev., s. 4821; C. S., s. 6077; 1943, c. 170; 1969, c. 1063, s. 3; 1977, c. 596, s. 4.)

Editor's Note. — The 1977 amendment added the last sentence.

§ 69-5. Deputy investigators. — It shall be the duty of the Attorney General to appoint two or more persons as deputies, whose particular duty it shall be to investigate forest fires and endeavor to ascertain the persons guilty of setting such fires and cause prosecution to be instituted against those who, as a result of such investigation, are deemed guilty. (1899, c. 58, s. 6; 1901, c. 387, s. 6; 1903, c. 719, s. 2; Rev., s. 4823; 1915, c. 109, s. 2; 1919, c. 186, s. 7; C. S., s. 6078; Ex. Sess. 1924, c. 119; 1943, c. 170; 1977, c. 596, s. 2.)

Editor's Note. — The 1977 amendment substituted "Attorney General" for "Commissioner of Insurance."

§ 69-6. Reports of Attorney General. — The Attorney General shall submit annually, as early as consistent with full and accurate preparation, and not later than the first day of June, a detailed report of his official action under this Article, and it shall be embodied in his report to the General Assembly. He shall, in his annual report, make a statement of the fires investigated, the value of property destroyed, the amount of insurance, if any, the origin of the fire, when ascertained, and the location of the property damaged or destroyed, whether in town, city, or country. (1899, c. 58, s. 7; 1901, c. 387, s. 7; Rev., s. 4824; 1915, c. 109, s. 1; C. S., s. 6079; 1943, c. 170; 1977, c. 596, s. 2.)

Editor's Note. — The 1977 amendment "Commissioner of Insurance" near the substituted "Attorney General" for beginning of the section.

§ 69-7.1. Insurance company to furnish information. — (a) The chief of any municipal fire or police department, county fire marshal or sheriff, or special agent of the State Bureau of Investigation may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information shall include, but is not limited to:

- (1) Any insurance policy relevant to a fire loss under investigation and any application for such a policy;
- (2) Policy premium payment records;
- (3) History of previous claims made by the insured for fire loss;
- (4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other relevant evidence.

(b) If an insurance company (or insurance agency) has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means, the company shall furnish the State Bureau of Investigation with all relevant material acquired during its investigation of the fire loss, cooperate with and take such action as may be requested of it by any law-enforcement agency, and permit any person ordered by a court to inspect any of its records pertaining to the policy and the loss.

(c) In the absence of fraud or malice, no insurance company (or insurance agency), or person who furnishes information on its behalf, shall be liable for damages in a civil action or subject to criminal prosecution for any oral or written statement made or any other action that is necessary to supply information required pursuant to this section.

(d) The officials and departmental and agency personnel receiving any information furnished pursuant to this section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(e) Any official referred to in subsection (a) of this section may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss. (1977, c. 520, s. 1.)

Editor's Note. — Session Laws 1977, c. 520, s. 2, makes this section effective Jan. 1, 1978.

ARTICLE 3A.

*Rural Fire Protection Districts.***§ 69-25.1. Election to be held upon petition of voters.**

Cited in *Tilghman v. West of New Bern Volunteer Fire Dep't*, 32 N.C. App. 767, 233 S.E.2d 598 (1977).

§ 69-25.2. Duties of county board of commissioners regarding conduct of elections; cost of holding. — The board of county commissioners, after consulting with the county board of elections, shall set a date for the election by resolution adopted. The county board of elections shall hold and conduct the election in the district. The county board of elections shall advertise and conduct said election, in accordance with the provisions of this Article and with the procedures prescribed in Chapter 163 governing the conduct of special and general elections. No new registration of voters shall be required, but the deadline by which unregistered voters must register shall be contained in the legal advertisement to be published by the county board of elections. The cost of holding the election shall be paid by the county. (1951, c. 820, s. 2; 1975, c. 706.)

Editor's Note. — The 1975 amendment rewrote this section.

§ 69-25.5. Methods of providing fire protection. — Upon the levy of such tax, the board of county commissioners shall, to the extent of the taxes collected hereunder, provide fire protection for the district —

- (1) By contracting with any incorporated city or town, with any incorporated nonprofit volunteer or community fire department, or with the Department of Natural Resources and Community Development to furnish fire protection, or
- (2) By furnishing fire protection itself if the county maintains an organized fire department, or
- (3) By establishing a fire department within the district, or
- (4) By utilizing any two or more of the above listed methods of furnishing fire protection. (1951, c. 820, s. 5; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Local Modification. — Bladen: 1977, c. 800.

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (1).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Cited in *Tilghman v. West of New Bern Volunteer Fire Dep't*, 32 N.C. App. 767, 233 S.E.2d 598 (1977).

§ 69-25.17. Validation of fire protection funds appropriated in providing rescue and ambulance services. — All prior appropriations and expenditures by any county board of commissioners of funds derived from taxes levied in rural fire protection districts, but used to provide rescue and ambulance services within said districts, are hereby approved, confirmed, validated, and declared to be proper, authorized, and legal. (1977, c. 131, s. 1.)

Editor's Note. — Session Laws 1977, c. 131, s. 2, provides that the act shall not affect pending litigation.

ARTICLE 4.

*Hotels; Safety Provisions.***§ 69-29. Automatic sprinklers.**

Legislative Intent. — There is a legislative intent to provide a complete and integrated regulatory scheme, including regulations as to the installation of sprinkler systems, in all buildings and structures, wherever situate in North Carolina, except as expressly exempted by statute. *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

Regulatory Authority in Building Code Council. — The intent to vest controlling regulatory authority in the Building Code Council appears within the provisions of this section in that the legislature provided that the installation of the sprinkler systems required by statute must ultimately be of such design,

condition and scope "as may be approved by the North Carolina Building Code Council." *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

City Ordinance. — An interpretation of § 160A-174 to allow a city ordinance requiring sprinkler systems, thus empowering a city to ignore explicit statewide legislative enactments, would, in effect, permit a city to amend the North Carolina Building Code by the simple expedient of codifying a contested ordinance as a part of its fire prevention code and thereby to evade the clear requirements of § 143-138(e). *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

Chapter 71.

Indians.

§§ 71-1 to 71-20: Repealed by Session Laws 1977, c. 849, s. 1, effective July 1, 1977.

Cross Reference. — For present provisions as to the North Carolina State Commission of Indian Affairs, see §§ 143B-404 to 143B-411.

Editor's Note. — Article 2 of this Chapter was also repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2.

State Government Reorganization. — The Commission on Indian Affairs was transferred to the Department of Administration by a Type II transfer by Session Laws 1977, c. 849, s. 1, effective July 1, 1977.

Chapter 72.**Inns, Hotels and Restaurants.****Article 4.**

**Licensing and Regulation of Tourist
Camps and Homes, Cabin
Camps, Roadhouses
and Public Dance
Halls.**

Sec.

72-39. [Repealed.]

ARTICLE 4.

*Licensing and Regulation of Tourist Camps and Homes,
Cabin Camps, Roadhouses and Public Dance Halls.*

§ 72-39: Repealed by Session Laws 1975, c. 402.

ARTICLE 5.

Sanitation of Establishments Providing Food and Lodging.

§ 72-49. Private homes; temporary food and drink stands operated by church, etc.; boardinghouses, private clubs, picnics, camp meetings, etc.

Private Clubs Are Establishments Which Maintain Selective Membership, Are Operated by the Membership and Are Not Profit Oriented. — See opinion of Attorney General to

Mr. John Andrews, Head, Sanitation Branch, Division of Health Services, 44 N.C.A.G. 182 (1974).

Chapter 74.

Mines and Quarries.

Article 1.

Operation of Mines and Quarries.

Sec.

74-1 to 74-14. [Repealed.]

Article 2.

Inspection of Mines and Quarries.

74-15 to 74-24. [Repealed.]

Article 2A.

Mine Safety and Health Act.

- 74-24.1. Short title and legislative purpose.
- 74-24.2. Definitions.
- 74-24.3. Coverage.
- 74-24.4. Safety and health standards.
- 74-24.5. Modification of safety and health standards.
- 74-24.6. Advisory Council.
- 74-24.7. Inspections and investigations.
- 74-24.8. Findings, notices, and orders.
- 74-24.9. Issuance and delivery of notices, orders, and decisions.
- 74-24.10. Review by the Commissioner.
- 74-24.11. Judicial review.
- 74-24.12. Injunctions.
- 74-24.13. Mandatory reporting.

Sec.

- 74-24.14. Criminal penalties.
- 74-24.15. Rights and duties of miners.
- 74-24.16. Education, training, technical assistance, and research.
- 74-24.17. State-federal plan.
- 74-24.18. Legal representation.
- 74-24.19. Administrative provisions.
- 74-24.20. Construction of Article and severability.

Article 6.

Mining Registration.

- 74-40. Definitions.
- 74-42. Duties of Secretary of Natural Resources and Community Development.
- 74-43. Mining registration.

Article 7.

The Mining Act of 1971.

- 74-49. Definitions.
- 74-51. Permits — application, granting, conditions.
- 74-53. Reclamation plan.
- 74-61. Appeals.
- 74-67. Exemptions.

ARTICLE 1.

Operation of Mines and Quarries.

§§ 74-1 to 74-14: Repealed by Session Laws 1975, c. 206, s. 21, effective January 1, 1976.

ARTICLE 2.

Inspection of Mines and Quarries.

§§ 74-15 to 74-24: Repealed by Session Laws 1975, c. 206, s. 21, effective January 1, 1976.

ARTICLE 2A.

Mine Safety and Health Act.

§ 74-24.1. Short title and legislative purpose. — (a) This Article shall be known as the Mine Safety and Health Act of North Carolina.

(b) Legislative findings and purpose:

- (1) The General Assembly finds that the burden of operators and miners of this State's mines resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope in attaining this objective lies in programs of research, engineering, education, and enforcement, and in earnest cooperation of the federal and state governments, operators, and miners.
- (2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to assure so far as possible every worker in North Carolina's mines safe and healthful working conditions and to preserve our human resources:
 - a. By encouraging operators and miners in their effort to reduce the number of occupational safety and health hazards in mines and to stimulate and assist operators and miners to institute new programs and to perfect existing programs for providing safe and healthful working conditions through technical assistance and consultation;
 - b. By recognizing that operators and miners have separate but interdependent responsibilities and rights with respect to achieving safe and healthful working conditions;
 - c. By authorizing the Commissioner to develop occupational safety and health standards applicable to mines giving consideration to the needs of operators and miners and to adopt standards promulgated from time to time by the federal government;
 - d. By providing occupational health criteria which will assure insofar as practicable that no miner will suffer diminished health, functional capacity, or life expectancy as a result of his work experience in a mine;
 - e. By providing education and training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
 - f. By providing an effective enforcement program which shall include a prohibition against giving advance notice of a mine inspection;
 - g. By providing for appropriate reporting procedures with respect to occupational safety and health which will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problems in mines;
 - h. By providing for research and technical assistance in the field of occupational safety and health in mines and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems in mines; and
 - i. By authorizing the Commissioner to enter into agreements and contracts with public and private agencies, including agencies of the United States government, organizations, and individuals in order to carry out the ends and purposes of this Article.

(c) The General Assembly of North Carolina appoints the North Carolina Department of Labor as the designated agency to administer the Mine Safety and Health Act of North Carolina. (1975, c. 206, s. 1.)

Editor's Note. — Session Laws 1975, c. 206, s. 21, makes the act effective Jan. 1, 1976.

§ 74-24.2. Definitions. — In this Article, unless the context otherwise requires:

- (1) The term “accident” means an unexpected event resulting in injury to, illness of, or death of a person or persons as a result of mining operations and any mine explosion, mine ignition, mine fire, mine inundation, mine cave-in, or other event which could have readily resulted in serious physical harm.
- (2) The term “Advisory Council” shall mean the Advisory Council or body authorized to be established under this Article.
- (3) The term “agent” means any person charged by the operator with responsibility for the operation of all or part of a mine or supervision of the miners in a mine, and for the purposes of this Article includes contractors, subcontractors, or independent contractors employed by the operator to perform any work or services at, in, or on the mine.
- (4) The term “Commissioner” means the Commissioner of Labor of North Carolina.
- (5) The term “Director” means the person authorized under G.S. 74-24.19 and appointed by the Commissioner for the purpose of assisting in the administration of this Article.
- (6) The term “imminent danger” means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious physical harm immediately to any miner if such condition or practice is not abated at once.
- (7) The term “mine” means an area of land and all private ways and roads appurtenant thereto, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed or constructed on, under, or above the surface of such land by any person, used in, or to be used in, or resulting from (including the reclamation of mined areas or the storage of materials in mined areas), or to facilitate the work of exploring for, developing of, or extracting by any means or method in such area all minerals, inorganic and organic, from their natural deposits. The term “mine” also includes all mineral processing and milling facilities except those used in the processing of source materials as defined in the Atomic Energy Act of 1954, as amended.
- (8) The term “miner” means any individual, other than an operator or an agent, working in or about a mine.
- (9) The term “operator” means an individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization owning, operating, leasing, controlling, or supervising a mining operation.
- (10) The term “repeated violation” means a violation for which an operator was issued a notice or an order on an inspection and which is found to exist again on the next regular inspection, even though the violation was abated within the time fixed for abatement.
- (11) The term “State” means the State of North Carolina. (1975, c. 206, s. 2.)

§ 74-24.3. Coverage. — Each mine shall be subject to the provisions of this Article, and each operator of such mine shall comply with all standards, rules, regulations, orders, and notices adopted or issued under this Article. The operator of such mine shall be responsible for the health and safety of all miners in a mine and shall assure insofar as practicable conditions of work and places of work free from hazards that are causing or are likely to cause death or serious physical harm. (1975, c. 206, s. 3.)

§ 74-24.4. Safety and health standards. — (a) The Commissioner shall develop, adopt, revise, and promulgate safety and health standards for the purpose of the protection of life, the promotion of safety and health, and the prevention of "accidents" in mines which are subject to this Article. In the development of safety and health standards, the Commissioner shall consult with the Advisory Council, interested federal agencies, appropriate representatives of other State agencies, appropriate representatives of mine operators and miners, and other interested persons and organizations whose participation would further the purposes of this Article.

(b) In developing and promulgating safety standards pursuant to this section, the Commissioner shall include standards with respect to the training of miners in first aid, safety, the proper use of rescue equipment available within mines, and periodic evacuation drills and disaster procedure training.

(c) The Division of Health Services of the Department of Human Resources shall have primary responsibility for research and the recommendation of health standards to the Commissioner to effectuate the purposes of this Article, and nothing in this subsection shall affect the authority of the Commissioner with respect to the promulgation and enforcement of both safety and health standards.

(d) The procedures utilized for the adoption and promulgation of safety and health standards, including notice and public hearings, shall be in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 206, s. 4.)

§ 74-24.5. Modification of safety and health standards. — Upon petition by an operator, a representative of miners, or a miner, the Commissioner may modify the application of any safety and health standard to a mine if the Commissioner determines that an alternative method of protecting the miners will guarantee the same measure of protection afforded the miners by the standard, or will enhance the level of safety and health provided by that standard. Upon receipt of such petition the Commissioner shall give public notice thereof and give notice to the operator, the representative of miners, or the miner in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of such operator, representative of the miners, or miner to enable the operator, the representative of miners, or miner in such mine or any interested party to present information relating to the modification of such standard. The Commissioner shall issue a decision incorporating his findings of fact therein and send a copy thereof to the operator, the representative of the miners, or miner as appropriate. Any such hearing shall be of record and shall be subject to judicial review in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 206, s. 5.)

§ 74-24.6. Advisory Council. — (a) The Commissioner shall appoint an Advisory Council consisting of 11 members to assist him in the development of safety and health standards for mines which are subject to this Article and to advise him on matters relating to safety and health in such mines. Said Advisory Council shall include three members expressly qualified by experience and affiliation to present the viewpoint of operators of such mines, three persons similarly qualified to present the viewpoint of workers in such mines, and five members of the public sector with knowledge of mining operations or associated health and safety aspects thereof. The Commissioner of Labor shall annually designate one member to act as chairman. The members of the Advisory Council shall serve at the pleasure of the Commissioner and shall have no specific term of office.

(b) The Advisory Council shall hold not fewer than two meetings during each calendar year, and said meetings shall be open to the public. The Commissioner shall furnish to the Advisory Council such secretarial, clerical, and other services as he deems necessary to conduct its business.

(c) The members of the Advisory Council shall be compensated for travel expenses and per diem as authorized by the Advisory Budget Commission in accordance with those amounts paid to State boards under Chapter 138 of the General Statutes.

(d) The Commissioner may from time to time select representatives of professional organizations of technicians, professional persons specializing in occupational safety and health, and representatives of State agencies who by experience and affiliation are qualified to present the viewpoint of operators of mines and workers in mines to assist the Advisory Council in performing its duties. Such persons, except State employees, selected for temporary purposes may be paid such per diem and travel expenses for attending meetings as may be fixed by the Advisory Budget Commission and recommended by the Commissioner. (1975, c. 206, s. 6; 1977, c. 683.)

Editor's Note. — The 1977 amendment, in subsection (a), substituted "11 members" for "seven members" in the first sentence, substituted "and five members of the public

sector with knowledge of mining operations or associated health and safety aspects thereof" for "and a chairman" at the end of the second sentence, and added the present third sentence.

§ 74-24.7. Inspections and investigations. — (a) The Commissioner through the Director shall make as many inspections and investigations in mines each year as are deemed necessary to effectively and accurately fulfill the requirements of:

- (1) Obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of "accidents" and causes of illnesses and physical impairments originating in such mines,
- (2) Gathering information with respect to the necessity for health and safety standards,
- (3) Determining whether an imminent danger exists,
- (4) Determining whether or not there is compliance with safety and health standards or with any notice, order, or decision issued under this Article.
- (5) In carrying out the requirements of (4) of this subsection, no advance notice of an inspection shall be provided to any mine operator, official, miner, representative of the miners, or other person, except that the Commissioner or Director may authorize the giving of advance notice only when such notice is essential to the effectiveness of the inspection.

(b) For the purpose of making any inspection or investigation under this Article, the Commissioner or his authorized representative shall have a right of entry to, upon, or through any mine at reasonable times.

(c) For the purpose of making any investigation of any "accident" relating to safety and health in a mine, the Commissioner may, after notice, hold hearings, and may issue subpoenas for the attendance and testimony of persons and the production of relevant documents, and administer oaths in any investigation conducted by him. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the general court of justice, superior court division, of the county in which such person is found or resides or transacts business, upon application by the Commissioner and after notice to such person, shall have jurisdiction to determine whether such person shall be punished as for contempt of court.

(d) In the event of an "accident" occurring in a mine, the operator shall notify the Commissioner or the Director thereof at such time as may be required and

shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any "accident" occurring in a mine where rescue and recovery work is necessary, the Commissioner through the Director shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(e) In the event of any "accident" occurring in a mine, the Commissioner through the Director may issue such orders as he deems appropriate to insure the safety of any person in the mine, and the operator of such mine shall obtain the approval of the Commissioner or his authorized representative in consultation with appropriate federal representatives, when feasible, of any plan to recover any person in the mine or to recover the mine or to return affected areas of the mine to normal.

(f) Whenever any miner or representative of the miners has reasonable grounds to believe that a violation of a safety or health standard exists, or that an imminent danger exists, such miner or representative of the miners may request an inspection by giving notice to the Commissioner or the Director of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall show the name of the miner, be signed by the miner or representative of the miners, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that, upon request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy. If, after receipt of such notification, the Commissioner finds that there are reasonable grounds to believe a violation may exist, a special inspection shall be made as soon as practicable to determine if, in fact, such violation or danger does exist under the provisions of this Article.

(g) At the commencement of any inspection of a mine by the Commissioner or his authorized representative, under subsection (a)(3) or subsection (a)(4) of this section, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the Commissioner or his authorized representative on such inspection, to inform the Commissioner or his authorized representative of conditions and practices in the mine, without loss or deduction in pay. Where there is no authorized representative of the miners, the Commissioner or his authorized representative shall have the right to consult with a reasonable number of miners concerning matters of safety and health in the work place. (1975, c. 206, s. 7.)

§ 74-24.8. Findings, notices, and orders. — (a) (1) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that an imminent danger exists, he shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines such imminent danger no longer exists.

(2) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that an imminent danger exists with respect to the condition or manner of use of any equipment, machinery, article, or apparatus, he shall thereupon issue an order requiring the operator or his agent to cause immediately such equipment, machinery, article, or apparatus to be withdrawn from, and to be prohibited from, use or operation until the Commissioner or his authorized representative determines that such imminent danger no longer exists.

(3) As a result of any investigation of any "accident" or as a result of any other investigation or tests performed, the Commissioner or his authorized representative may cause to be withdrawn and prohibited

from use or operation in any mine any equipment, machinery, article, or apparatus the use of which is likely to cause serious physical harm or an "accident" until the Commissioner or his authorized representative determines that such equipment, machinery, article, or apparatus has been repaired, modified, reconditioned, or altered in such manner that "accidents" or serious physical harm will thereafter be avoided.

(b) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that there has been a violation of any safety and health standard but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period as originally fixed or subsequently extended, the Commissioner or his authorized representative finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines that the violation has been abated.

(c) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that there has been a repeated violation of a safety or health standard which could reasonably be expected to result in serious physical harm to any miner, he shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines that the violation has been abated.

(d) The following persons may enter, upon approval of the Commissioner or his authorized representative, any area of a mine subject to an order issued under this section:

- (1) Any person whose presence in such area is necessary, in the judgment of the operator or the Commissioner or his authorized representative, to eliminate the condition described in the order;
- (2) A public official whose official duties require him to enter such area;
- (3) A representative of the miners in such mine who, in the judgment of the operator or the Commissioner, or his authorized representative, is qualified to make mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the condition described in the order;
- (4) A consultant to any of the foregoing.

(e) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any safety or health standard and where appropriate, a description of the area of the mine from which persons must be withdrawn and prohibited from entering, and a description of the equipment, machinery, article, or apparatus which shall be withdrawn and prohibited from use or operation.

(f) A notice or order issued pursuant to this section may be modified, vacated, or terminated upon review by the Commissioner or his authorized representative. (1975, c. 206, s. 8.)

§ 74-24.9. Issuance and delivery of notices, orders, and decisions. — (a) All notices or orders issued under G.S. 74-24.8 shall be in writing, signed by the Commissioner or his authorized representative, and shall be given promptly to the operator of the mine.

(b) In order to insure prompt compliance with all notices, orders, or decisions issued under this Article, the Commissioner or his authorized representative may deliver such notices, orders, or decisions to an agent of the operator, and such agent shall immediately take appropriate measures to insure compliance with such notice, order, or decision.

(c) Each operator of a mine shall file with the Commissioner the name and address of such mine and the name and address of the operator of the mine. Any revisions in such names or addresses shall be promptly filed with the Commissioner. Each operator of a mine shall designate a responsible official, and shall file the name and address of said official with the Commissioner, as the principal officer in charge of safety and health at such mine, and such official shall receive a copy of any notice, order, or decision issued under this Article affecting such mine. In any case, where the mine is subject to the control of any person not directly involved in the daily operations of the mine, there shall be filed with the Commissioner the name and address of such person and the name and address of a principal official who shall have overall responsibility for the conduct of an effective safety and health program at any mine subject to the control of such person, and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a safety and health official under this subsection shall not be construed as making such official subject to any penalty under this Article. (1975, c. 206, s. 9.)

§ 74-24.10. Review by the Commissioner. — (a) An operator issued a notice or order pursuant to the provisions of G.S. 74-24.8 and 74-24.9 may apply to the Commissioner for review of the notice or order within 30 days of receipt thereof or within 30 days of its modification.

(1) The applicant, at the same time, shall send a copy of such application to the representative of the miners, if any, in the mine or all affected miners.

(2) Upon a receipt of such application, the Commissioner shall cause such investigations to be made as he deems appropriate. Such investigations shall provide an opportunity for a public hearing, at the request of the operator or the representative of the miners in such mine or affected miners, to enable the operator or the representative of the miners in such mine or affected miners to present information relating to the issuance and continuance of such notice or order, or the modification, vacation, or termination thereof.

(3) The operator and the representative of the miners, if any, or affected miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to the rules of evidence applicable in the district and superior courts of this State. Interested parties shall have an opportunity to appear, present evidence, and examine witnesses.

(b) Upon receiving the report of such investigation, the Commissioner shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating any notice or order issued.

(c) In view of the urgent need for prompt decision of matters submitted to the Commissioner under this section, action shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

(d) All notices and orders issued under this Article shall be stayed while such notice or order is under review, except that orders issued under G.S. 74-24.8(a) shall not be stayed. (1975, c. 206, s. 10.)

§ 74-24.11. Judicial review. — Any final order or decision issued by the Commissioner under this Article shall be subject to judicial review in accordance

with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 206, s. 11.)

§ 74-24.12. Injunctions. — The Commissioner through the Director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the superior court of the county in which a mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (i) violates or fails or refuses to comply with any final order or decision issued under this Article or (ii) interferes with, hinders, or delays the Commissioner in carrying out the provisions of this Article, or (iii) refuses to admit the Commissioner or his authorized representative to the mine, or (iv) refuses to permit the inspection of the mine, or the investigation of an accident or occupational illness occurring in, or connected with, such mine, or (v) refuses to furnish any information or report requested by the Commissioner in furtherance of the provisions of this Article. (1975, c. 206, s. 12.)

§ 74-24.13. Mandatory reporting. — Under such regulations as he may prescribe, the Commissioner shall require that:

- (1) Operators of mines which are subject to this Article submit, at least annually and at such other times as he deems necessary, and in such form as he may prescribe, reports of "accidents," injuries, occupational disease, and related data, and the Commissioner through the Director shall compile, analyze, and publish, either in summary or detailed form, the information obtained; and all information, reports, orders, or findings, obtained or issued under this Article may be published and released to any interested person, and shall be made available for public inspection.
- (2) All "accidents" shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such "accidents" and investigations shall be kept, and the information shall be made readily available for inspection by the Commissioner or his authorized representative. Such records shall include man-hours worked and shall be reported for periods determined by the Commissioner, but at least annually.
- (3) The operators of mines which are subject to this Article shall notify the Commissioner, before starting operations, of the approximate or actual date mine operations will commence. The notification shall include mine name, location, the company name, mailing address, the person in charge, and whether operations will be continuous or intermittent. When any mine subject to this Article is closed, the operator shall notify the Commissioner of such closure and indicate whether the closure is temporary or permanent. (1975, c. 206, s. 13.)

§ 74-24.14. Criminal penalties. — Any person who (i) willfully violates any standard, order, notice, decision, rule, or regulation issued under authority of this Article, and said violation causes death or serious physical harm to another; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Article or required by any order, notice, or decision issued under this Article; (iii) knowingly distributes, sells, offers for sale, introduces, or delivers any equipment, machinery, article, or apparatus which is represented as complying with the provisions of this Article, or with any specification or regulation of the Commissioner applicable to such equipment, machinery, article, or apparatus and knowing it does not so comply, shall be guilty of a misdemeanor and upon conviction thereof be punished for each such

offense by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment not to exceed 60 days, or both. In any instance in which such offense is committed by a corporation, the officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both. (1975, c. 206, s. 14.)

§ 74-24.15. Rights and duties of miners. — (a) Miners shall comply with all safety and health standards and all rules, regulations, or orders issued pursuant to this Article which are applicable to their own actions and conduct.

(b) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (i) has notified the Commissioner of any alleged violation or danger, (ii) has filed, instituted, or caused to be filed or instituted any proceeding under this Article, or (iii) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Article.

(c) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after such violation occurs, apply to the Commissioner for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Commissioner shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to the rules of evidence applicable in the district and superior courts of this State. Interested persons shall have an opportunity to appear, present evidence, and examine witnesses. Upon receiving the report of such investigation, the Commissioner shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Commissioner deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Commissioner's findings therein. Any order issued by the Commissioner under this subsection shall be subject to judicial review in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. Enforcement of a final order or decision issued under this subsection shall be subject to the provisions of G.S. 74-24.12.

(d) Whenever an order is issued under this section at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commissioner to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation. (1975, c. 206, s. 15.)

§ 74-24.16. Education, training, technical assistance, and research. — (a) The Commissioner through the Director is authorized to develop and conduct expanded programs for the education, training, and technical assistance of operators and miners in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions and to conduct such research as may be necessary in mines which are subject to this Article.

(b) The Commissioner is authorized to conduct, directly or by grants, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this Article.

(c) In carrying out the provisions of this Article, the Commissioner is authorized to enter into agreements and contracts with, and accept grants from and make grants to, public and private agencies and organizations and individuals. (1975, c. 206, s. 16.)

§ 74-24.17. State-federal plan. — In order to promote sound and effective coordination in State and federal activities within the field covered by this Article, the Commissioner is hereby authorized to enter into and, from time to time, to amend or terminate a State-federal plant agreement with the federal agency charged with administering laws relating to safety and health in mines. (1975, c. 206, s. 17.)

§ 74-24.18. Legal representation. — It shall be the duty of the Attorney General of North Carolina to represent the Department of Labor in all actions or proceedings in connection with this Article. (1975, c. 206, s. 18.)

§ 74-24.19. Administrative provisions. — (a) The Commissioner shall appoint a Director to assist him in administering the provisions of this Article and, through the Director, shall have authority to appoint, subject to Chapter 126 of the General Statutes of North Carolina, such officers, engineers, inspectors, and employees as he deems requisite for the administration of this Article; and to prescribe powers, duties, and responsibilities of all officers, engineers, inspectors, and employees engaged in the administration of this Article.

(b) All persons appointed as representatives of the Commissioner shall be qualified by practical experience in mine safety and health administration or practical experience in mining or by experience as a practical mining engineer or by education. All persons so appointed shall be physically able to perform their duties predicated on their work assignments, and all persons subject to making inspections, investigations, or participating in rescue and recovery work shall be examined prior to their employment and annually thereafter by a physician who shall certify their physical ability to perform their duties in mines subject to this Article. The fee for the required annual examination shall be satisfied as recommended by the Commissioner.

(c) The Commissioner, the Director, or any other officer, engineer, inspector, or employee engaged in the administration of this Article shall not, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation, financial or otherwise, with any operating mining company, operator's association, or labor union. (1975, c. 206, s. 19.)

§ 74-24.20. Construction of Article and severability. — This Article shall receive a liberal construction to the end that the safety and health of miners in the State may be effectuated and protected. If any provision of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1975, c. 206, s. 20.)

ARTICLE 6.

Mining Registration.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 74-40. Definitions. — Wherever used or referred to in this Article, unless a different meaning clearly appears from the context:

(2) "Department" means the Department of Natural Resources and Community Development.
(1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (2).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the other subdivisions were not changed by the amendment, they are not set out.

§ 74-42. Duties of Secretary of Natural Resources and Community Development. — The Secretary of Natural Resources and Community Development shall administer the provisions for registration of mining operations contained in this Article. In addition, he shall furnish staff assistance to the Mining Commission as it prepares its recommendations called for by this Article. In this capacity, he shall engage in such study and research concerning mining operations and their regulation in this State and elsewhere as may be required to furnish the Commission with a thorough factual basis for its recommendations. (1969, c. 1204, s. 4; 1973, c. 1262, s. 33; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 74-43. Mining registration. — Prior to March 31, 1970, the owner or operator of every mining operation in the State shall secure a registration certificate from the Department of Natural Resources and Community Development. Such a certificate shall be issued only where the applicant shall have furnished the following information concerning the mining operation:

(3) Maps, based on criteria developed by the Department of Natural Resources and Community Development and acceptable to the Mining Commission, to show property lines or affected area of the mining operation, location of any processing plants, extent of pits and stockpile areas and overburden disposal areas;

(1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (3).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (3) are set out.

§ 74-44. Rules and regulations of Mining Commission.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 7.*The Mining Act of 1971.*

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 74-49. Definitions. — Wherever used or referred to in this Article, unless a different meaning clearly appears from the context:

(3) "Commission" means the Mining Commission created by G.S. 143B-290.

(4) "Department" means the Department of Natural Resources and Community Development. Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or by such of his subordinates as he may designate.

(1977, c. 771, s. 4; c. 845, s. 1.)

Editor's Note. —

The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (4).

The second 1977 amendment substituted "G.S. 143B-290" for "G.S. 74-37 and 74-38" in subdivision (3).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (3) and (4) are set out.

§ 74-51. Permits — application, granting, conditions. — Any operator desiring to engage in mining shall make written application to the Department for a permit. Such application shall be upon a form furnished by the Department and shall fully state the information called for; in addition, the applicant may be required to furnish such other information as may be deemed necessary by the Department in order adequately to enforce this Article.

The application shall be accompanied by a reclamation plan which meets the requirements of G.S. 74-53. No permit shall be issued until such plan has been approved by the Department.

The application shall be accompanied by a signed agreement, in a form specified by the Department, that in the event a bond forfeiture is ordered pursuant to G.S. 74-59, the Department and its representatives and its contractors shall have the right to make whatever entries on the land and to take whatever actions may be necessary in order to carry out reclamation which the operator has failed to complete.

The Department shall grant or deny the permit requested as expeditiously as possible but in no event later than 60 days after the application form and any supplemental information required shall have been filed with the Department. Priority consideration shall be given to applicants who submit evidence that the mining proposed will be for the purpose of supplying materials to the Board of Transportation.

The Department may deny such permit upon finding:

- (1) That any requirement of this Article or any rule or regulation promulgated hereunder will be violated by the proposed operation;
- (2) That the operation will have unduly adverse effects on wildlife or fresh water, estuarine, or marine fisheries;
- (3) That the operation will violate standards of air quality, surface water quality, or groundwater quality which have been promulgated by the Department of Natural Resources and Community Development;
- (4) That the operation will constitute a substantial physical hazard to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public property;
- (5) That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area;
- (6) That previous experience with similar operations indicates a substantial possibility that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution; or
- (7) That the operator has not corrected all violations which he may have committed under any prior permit and which resulted in,
 - a. Revocation of his permit,
 - b. Forfeiture of part or all of his bond or other security,
 - c. Conviction of a misdemeanor under G.S. 74-64, or
 - d. Any other court order issued under G.S. 74-64.

In the absence of any such findings, a permit shall be granted.

Any permit issued shall be expressly conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with such further reasonable and appropriate requirements and safeguards as may be deemed necessary by the Department to assure that the operation will comply fully with the requirements and objectives of this Article. Such conditions may, among others, include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, where the Department finds such screening to be feasible and desirable. Violation of any such conditions shall be treated as a violation of this Article and shall constitute a basis for suspension or revocation of the permit.

Any operator wishing any modification of the terms and conditions of his permit or of the approved reclamation plan shall submit a request for modification in accordance with the provisions of G.S. 74-52.

If the Department denies an application for a permit, it shall notify the operator in writing, stating the reasons for its denial and any modifications in the application which would make it acceptable. The operator may thereupon modify his application or file an appeal, as provided in G.S. 74-61, but no such appeal shall be taken more than 60 days after notice of disapproval has been mailed to him at the address shown on his application.

Upon approval of an application, the Department shall set the amount of the performance bond or other security which is to be required pursuant to G.S. 74-54. The operator shall have 60 days following the mailing of such notification in which to deposit the required bond or security with the Department. The operating permit shall not be issued until receipt of this deposit.

When one operator succeeds to the interest of another in any uncompleted mining operation, by virtue of a sale, lease, assignment, or otherwise, the Department may release the first operator from the duties imposed upon him by this Article with reference to such operation and transfer the permit to the successor operator; provided, that both operators have complied with the requirements of this Article and that the successor operator assumes the duties of the first operator with reference to reclamation of the land and posts a suitable bond or other security. (1971, c. 545, s. 6; 1973, c. 507, s. 5; 1977, c. 771, s. 4; c. 845, s. 2.)

Editor's Note. —

Session Laws 1977, c. 845 substituted "Department of Natural and Economic Resources" for "Department of Water and Air Resources" in subdivision (3) in the fifth paragraph.

Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community

Development" has been substituted for "Natural and Economic Resources" in this section as amended by Session Laws 1977, c. 845.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 74-53. Reclamation plan. — The operator shall submit with his application for an operating permit a proposed reclamation plan. Said plan shall include as a minimum, each of the elements specified in the definition of "reclamation plan" in G.S. 74-49, plus such other information as may be reasonably required by the Department. The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall to the extent feasible be conducted simultaneously with mining operations and in any event be initiated at the earliest practicable time after completion or termination of mining on any segment of the permit area. The plan shall provide that reclamation activities shall be completed within two years after completion or termination of mining on each segment of the area for which a permit is requested unless a longer period is specifically permitted by the Department.

The Department may approve, approve subject to stated modifications, or reject the plan which is proposed. The Department shall approve a reclamation plan (as submitted or as modified) only where it finds that it adequately provides for those actions necessary to achieve the purposes and requirements of this Article, and that in addition, the plan meets the following minimum standards:

- (1) The final slopes in all excavations in soil, sand, gravel, and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
- (2) Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
- (3) In open cast mining operations, all overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
- (4) In no event shall any provision of this section be construed to allow small pools of water that are, or are likely to become, noxious, odious, or foul to collect or remain on the mined area. Suitable drainage ditches or conduits shall be constructed or installed to avoid such conditions. Lakes, ponds, and marsh lands shall be considered adequately reclaimed lands when approved by the Department.

- (5) The type of vegetative cover and methods of its establishment shall be specified, and in every case shall conform to accepted and recommended agronomic and reforestation restoration practices as established by the North Carolina Agricultural Experiment Station and Department of Natural Resources and Community Development. Advice and technical assistance may be obtained through the State soil and water conservation districts.

The Department shall be authorized to approve a reclamation plan despite the fact that such plan does not provide for reclamation treatment of every portion of the affected land, where the Department finds that because of special conditions such treatment would not be feasible for particular areas and that the plan takes all practical steps to minimize the extent of such areas. (1971, c. 545, s. 8; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the first sentence of subdivision (5).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 74-61. Appeals. — An appeal may be taken to the Mining Commission from any decision or determination of the Department refusing, modifying, suspending, revoking, or terminating an operating permit or reclamation plan, or imposing any term or condition on said permit or reclamation plan. The person taking such appeal shall within 60 days after the Department's decision give written notice to the Mining Commission through the Department of Natural Resources and Community Development that he desires to take an appeal, at the same time filing a copy of such notice with the Department. The chairman of the Mining Commission shall fix a reasonable time and place for a hearing, giving reasonable notice thereof to the appellant and to the Department. The Mining Commission, or a committee thereof designated by the Commission's rules of procedure, shall thereupon conduct a full and complete hearing as to the matters in controversy, after which it shall within a reasonable time give a written decision setting forth its findings of fact and its conclusions. The Commission or its designated committee may affirm, affirm with modifications, or overrule the decision of the Department and may direct the Department to take such action as may be required to effectuate its decision. A further appeal may be taken from the Commission's decision to a superior court, as provided below. (1971, c. 545, s. 16; 1973, c. 1262, s. 33; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 74-62. Judicial review.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 74-63. Rules and regulations.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 74-67. Exemptions. — The provisions of this Article shall not apply to those activities of the Department of Transportation, nor of any person, firm, or corporation acting under contract with said Department of Transportation, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the public road systems of North Carolina; provided, that this exemption shall not become effective until the Department of Transportation shall have adopted reclamation standards applying to such activities and such standards have been approved by the Mining Commission. The provisions of this Article shall not apply to mining on federal lands under a valid permit from the U.S. Forest Service or the U.S. Bureau of Land Management. (1971, c. 545, s. 22; 1973, c. 507, s. 5; c. 1262, s. 33; 1977, c. 464, s. 34.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in three places.

Chapter 74A.

Company Police.

Sec.

74A-1. Attorney General may appoint and commission special police; civil liability of companies or corporations for which appointed.

74A-2. Oath, powers, and bond of company police; exceptions as to railroad police.

Sec.

74A-5. Police powers cease on company's filing notice.

§ 74A-1. Attorney General may appoint and commission special police; civil liability of companies or corporations for which appointed. — Any educational institution or hospital, whether State or private, or any other State institution, public utility company, construction company, manufacturing company, auction company, incorporated security patrols or corporations engaged in providing security or protection services for persons or property, may apply to the Attorney General to commission such persons as the institution, corporation or company may designate to act as policemen for it. The Attorney General upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such company or corporation from any civil liability for the acts of such policemen, in exercising or attempting to exercise the powers conferred by this Chapter. (1871-2, c. 138, ss. 51, 52; Code, ss. 1988, 1989; Rev., ss. 2605, 2606; 1907, c. 128, s. 1; C. S., s. 3484; 1923, c. 23; 1933, c. 61; 1943, c. 676, ss. 1, 4; 1947, c. 390; 1963, c. 1165, s. 2; 1965, cc. 297, 581; 1977, c. 148, s. 4.)

Editor's Note. — The 1977 amendment substituted "Attorney General" for "Governor" in the catchline and in the first and second sentences.

§ 74A-2. Oath, powers, and bond of company police; exceptions as to railroad police.

(c) Every policeman appointed under this Chapter shall, before entering upon the duties of his office, file in the Attorney General's office a bond in the sum of twenty-five hundred dollars (\$2,500), payable to the State of North Carolina, conditioned upon the faithful performance of the duties of his office. Such bonds shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8.

(1977, c. 148, s. 4.)

Editor's Note. — The 1977 amendment substituted "Attorney General's" for "Governor's" in the first sentence of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 74A-5. Police powers cease on company's filing notice. — Whenever any company shall no longer require the services of any policeman so appointed as

aforesaid, it may file a notice to that effect in the office of the Attorney General and thereupon the power of such officer shall cease and determine. (1871-2, c. 138, s. 56; Code, s. 1993; Rev., s. 2610; C. S., s. 3488; 1943, c. 676, s. 3; 1959, c. 124, s. 2; 1963, c. 1165, s. 2; 1977, c. 148, s. 5.)

Editor's Note. — The 1977 amendment substituted "Attorney General" for "Governor."

Chapter 74B.

Private Protective Services Act.

Sec.

74B-3. Definitions.

74B-4. Private Protective Services Board established; members, terms, vacancies.

74B-10. Applications for and issuance of license.

74B-11. Form of license; term; renewal; posting; not assignable.

Sec.

74B-13. Registration of persons employed.

74B-13.1. Temporary employment of person licensed in another state.

74B-15. Prohibited acts.

74B-16. Penal provision.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 74B-3. Definitions.

(b) "Private protective services" shall not mean:

- (1) Insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment or claims against an insurance company;
- (2) An officer or employee of the United States, this State, or any political subdivision of either, while such officer or employee is engaged in the performance of his official duties within the course and scope of his employment with the United States, this State, or any political subdivision of either;
- (3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons;
- (4) An attorney at law licensed to practice in North Carolina and who is engaged primarily in such practice, and his agent, provided said agent is performing duties only in connection with his master's practice of law; or
- (5) The legal owner of personal property which has been sold under a conditional sales agreement or a mortgage;
- (6) A person engaged in the business of a consumer reporting agency, as defined by the Federal Fair Trade Reporting Act;
- (7) Company police as defined in Chapter 74A;
- (8) Railroad police as defined in Chapter 74A;
- (9) Persons, firms or corporations operating under a motor carrier permit or certificate issued by the North Carolina Utilities Commission. (1973, c. 528, s. 1; 1977, c. 481.)

Editor's Note. —

The 1977 amendment added subdivision (9) to subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 74B-4. Private Protective Services Board established; members, terms, vacancies. — (a) The Private Protective Services Board, hereafter called "the Board," is hereby established in the Department of Justice. The Board shall consist of eight members: the Director of the North Carolina State Bureau of Investigation; two persons appointed by the Attorney General of North Carolina; one person appointed by the Governor of North Carolina; one person appointed by the Lieutenant Governor of North Carolina; one person appointed by the President pro tem of the North Carolina Senate; and two persons appointed by the Speaker of the North Carolina House of Representatives. Those persons appointed by the President pro tem of the Senate and the Speaker of the House of Representatives shall be licensees under this Chapter.

A chairman of the Board shall be selected by the members of the Board for a term of one year, and shall be eligible for reelection.

The terms of the Board members shall begin as follows: the Attorney General shall appoint two persons to serve terms of two years beginning July 1, 1977; the person appointed by the Governor shall serve a term of four years beginning July 1, 1977; the person appointed by the Lieutenant Governor shall serve a term of four years beginning July 1, 1977; the person appointed by the President pro tem of the Senate shall serve a term of two years beginning July 1, 1977; and the Speaker of the House of Representatives shall appoint one person to serve a term of four years, and one person to serve a term of two years beginning July 1, 1977.

(1975, c. 592, ss. 8, 9; 1977, c. 535.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, in subsection (a) as it existed prior to the 1977 amendment, deleted "chairman" following "Director of the North Carolina State Bureau of Investigation" in the first paragraph and rewrote the first sentence of the second paragraph.

The 1977 amendment, effective July 1, 1977, rewrote subsection (a).

As the rest of the section was not changed by the amendments, it is not set out.

§ 74B-7. Powers of Board.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 74B-10. Applications for and issuance of license.

(b) The application shall include:

- (1) The full name and business address of the applicant;
- (2) The name under which the applicant intends to do business;
- (3) A statement as to the general nature of the business in which the applicant intends to engage;
- (4) If an applicant is a person other than an individual, the full name and address and verified signatures of each of its partners, officers and directors and its business manager, if any;
- (5) The names of not less than three unrelated and disinterested persons, as references of whom inquiry can be made as to the character, standing and reputation of the persons making the application; and

- (6) Such other information, evidence, statements or documents as may be required by the Board.

(f) Upon notification of approval by the Private Protective Services Board, applicant must within 60 days obtain the license applied for or his application shall be void. (1973, c. 47, s. 2; c. 528, s. 1; 1975, c. 592, s. 1; 1977, c. 570, s. 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added subsection (f).

The 1977 amendment, in subdivision (5) of subsection (b), added "and" at the end of the subdivision and deleted the former second sentence, which read: "At least one of such persons must be a judge or district attorney of

a court of record in the county of applicant's last known residence and one such person must be a municipal chief of police or county sheriff in the county of the applicant's last known residence; and."

As the rest of the section was not changed by the amendments, only subsections (b) and (f) are set out.

§ 74B-11. Form of license; term; renewal; posting; not assignable. — (a) The license when issued shall be in such form as may be determined by the Board and shall state:

- (1) The name of the licensee;
- (2) The name under which the licensee is to operate;
- (3) The number and date of the license.

(b) The license shall be issued for a term of two years and shall be renewable, unless the license shall have been previously revoked in accordance with the provisions of this Chapter. A trainee permit shall be issued for a term of one year and may be renewed yearly at the discretion of the Board. Following issuance, the license shall at all times be posted in a conspicuous place in the principal place of business of the licensee. A license issued under this Chapter is not assignable.

(c) Application and license fees are as follows:

- (1) Fifty-dollar (\$50.00) nonrefundable application fee.
- (2) Two-hundred-dollar (\$200.00) fee for a new or renewed license.
- (3) Fifty dollars (\$50.00) for annual trainee permit, which may be renewed three times.
- (4) Twenty-five-dollar (\$25.00) fee for each license in addition to the two-hundred-dollar (\$200.00) basic license.
- (5) Ten-dollar (\$10.00) registration fee (nontransferable) for a security guard paid by the guard for each registration.

(d) The operator or manager of any branch office shall be properly licensed and his license shall be posted at all times in a conspicuous place in the office.

(e) A license granted under the provisions of this Chapter may be renewed by the Private Protective Services Board upon notification by licensee to the administrator of intended renewal and the payment of the proper fee specified in G.S. 74B-11(c). The renewal shall be finalized before the expiration date of the license unless the renewal is accompanied by a late renewal fee of one hundred dollars (\$100.00). In no event will renewal be granted more than three months after date of expiration of a license. No person, firm, company, partnership or corporation shall carry on any business subject to this Chapter during any period which may exist between the date of expiration of a license and the renewal thereof.

All fees collected pursuant to this section shall be expended, under the direction of the Board, for the purposes of defraying the expenses of administering this Chapter. (1973, c. 528, s. 1; c. 1428; 1975, c. 592, ss. 2-4.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted the fourth sentence of subsection (b) and added subsections (d) and (e).

§ 74B-13. Registration of persons employed.

(c) The administrator shall be notified in writing of the termination of any employee registered under this Chapter within 30 days after said termination. (1973, c. 528, s. 1; 1975, c. 592, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 74B-13.1. Temporary employment of person licensed in another state. — Notwithstanding the provisions of G.S. 74B-13, a person licensed in accordance with this Chapter may employ a person properly registered or licensed as a security guard in another state for a period not to exceed 10 days in any given month, provided such licensee, prior to employing such guard, submits to the administrator the name, address and social security number of such guard and the administrator approves the employment. (1977, c. 570, s. 3.)

§ 74B-14. Suspension or revocation of licenses; appeal.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 74B-15. Prohibited acts.

(b) No licensee or officer, director, partner, manager or employee of a licensee shall knowingly make any false report to the employer or client for whom information was being obtained.

(e) Every licensee shall file in writing with the Board the address of each of his branch offices, if any, within 10 days after the establishment, closing or changing of the location of any branch office.

(g) No law-enforcement officer of the United States, this State or any of its agencies or political subdivisions shall be licensed under this Chapter; provided, however, nothing in this Chapter shall be construed to prohibit a law-enforcement officer from being employed during his off-duty hours to perform services regulated by this Chapter on a purely employee-employer relationship by persons or organizations not licensed by this Chapter; provided further that nothing in this section shall be construed to prohibit the holder of a company police commission under Chapter 74A of the General Statutes from being licensed under this Chapter, or being employed by a licensee under this Chapter. (1973, c. 47, s. 2; c. 528, s. 1; c. 1229; 1975, c. 19, s. 19; c. 592, s. 6; 1977, c. 570, s. 1.)

Editor's Note. —

The first 1975 amendment corrected an error in Session Laws 1973, c. 528, s. 1, by substituting "the" for "this" preceding "employer" in subsection (b).

The second 1975 amendment, effective July 1, 1975, deleted the second sentence of subsection (e).

The 1977 amendment added the second proviso to subsection (g).

As the rest of the section was not changed by the amendments, only subsections (b), (e) and (g) are set out.

§ 74B-16. Penal provision. — Any person who violates any provision of this Chapter or any rule or regulation promulgated pursuant thereto shall be guilty of a misdemeanor and shall upon conviction be fined or imprisoned or both at the discretion of the court. (1973, c. 528, s. 1; 1975, c. 592, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, inserted "or any rule or regulation promulgated pursuant thereto."

Chapter 75.

Monopolies, Trusts and Consumer Protection.

Article 1.

General Provisions.

Sec.

75-1.1. Methods of competition, acts and practices regulated; legislative policy.

75-15.2. Civil penalty.

75-16. Civil action by person injured; treble damages.

75-27. Unsolicited merchandise.

75-30 to 75-49. [Reserved.]

Article 2.

Prohibited Acts by Debt Collectors.

Sec.

75-50. Definitions.

75-51. Threats and coercion.

75-52. Harassment.

75-53. Unreasonable publication.

75-54. Deceptive representation.

75-55. Unconscionable means.

75-56. Application.

ARTICLE 1.

General Provisions.

§ 75-1. Combinations in restraint of trade illegal.

Enforceability of Covenant Not to Compete. —

By this section, contracts in restraint of trade are made illegal in North Carolina; however, in this State a covenant not to compete is enforceable in equity if it is (1) in writing, (2) entered into at the time and as a part of the

contract of employment, (3) based on valuable considerations, (4) reasonable both as to time and territory embraced in the restrictions, (5) fair to the parties and (6) not against public policy. *Forrest Paschal Mach. Co. v. Milholen*, 27 N.C. App. 678, 220 S.E.2d 190 (1975).

§ 75-1.1. Methods of competition, acts and practices regulated; legislative policy. — (a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(b) For purposes of this section, "commerce" includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.

(1977, c. 747, ss. 1, 2.)

Editor's Note. —

The 1977 amendment inserted "in or affecting commerce" in subsection (a), deleted "hereby" preceding "declared unlawful" in subsection (a), and rewrote subsection (b).

Session Laws 1977, c. 747, s. 5, provides in part that the act shall not apply to pending litigation.

As subsections (c) and (d) were not changed by the amendment, they are not set out.

For a note discussing this section, see 12 *Wake Forest L. Rev.* 484 (1976).

For comment entitled, "Attacking the 'Forfeiture as Liquidated Damages' Clause in North Carolina Installment Land Sales

Contracts as an Equitable Mortgage, Penalty and Unfair and Deceptive Trade Practice," see 7 *N.C. Cent. L.J.* 370 (1976).

Legislative Intent. — It was the clear intention of the General Assembly in enacting this section and § 75-16, among other things, to declare deceptive acts or practices in the conduct of any trade or commerce in North Carolina unlawful, to provide civil means to maintain ethical standards of dealings between persons engaged in business and the consuming public within this State and to enable a person injured by deceptive acts or practices to recover treble damages from a wrongdoer. *Hardy v. Toler*, 24 *N.C. App.* 625, 211 S.E.2d 809, modified on other grounds, 288 *N.C.* 303, 218 S.E.2d 342 (1975).

The intent of the General Assembly in enacting Chapter 833 was to enable a person damaged by deceptive acts or practices to recover treble damages from the wrongdoer, and to declare deceptive acts or practices in the conduct of any trade or commerce to be unlawful, and to provide civil legal means to maintain ethical standards of dealings between persons in business and the consuming public of North Carolina. State ex rel. Edmisten v. J.C. Penney Co., 30 N.C. App. 368, 227 S.E.2d 141 (1976), rev'd on other grounds, 292 N.C. 311, 233 S.E.2d 895 (1977), decided prior to the 1977 amendment.

The language of this section closely parallels that of Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (1973 Ed.), which prohibits "unfair or deceptive acts or practices in commerce." Hardy v. Toler, 288 N.C. 303, 218 S.E.2d 342 (1975); State ex rel. Edmisten v. J.C. Penney Co., 30 N.C. App. 368, 227 S.E.2d 141 (1976), rev'd on other grounds, 292 N.C. 311, 233 S.E.2d 895 (1977).

The federal decisions construing the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), may furnish some guidance to the meaning of this section but federal court decisions are not controlling in construing this section. State ex rel. Edmisten v. J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977).

Unlike other state trade regulation statutes, this section does not require or direct reference to the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), for its interpretation. State ex rel. Edmisten v. J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977).

This section should be interpreted to grant broad relief against "unfair or deceptive acts or practices in the conduct of any trade or commerce." State ex rel. Edmisten v. J.C. Penney Co., 30 N.C. App. 368, 227 S.E.2d 141 (1976), rev'd on other grounds, 292 N.C. 311, 233 S.E.2d 895 (1977), decided prior to the 1977 amendment.

The unfair and deceptive acts and practices forbidden by subsection (a) are those involved in the bargain, sale, barter, exchange or traffic. State ex rel. Edmisten v. J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977), decided prior to the 1977 amendment.

Debt Collection Activities. — Debt collection activities are not trade in the ordinary sense although they could be considered a species of commerce. State ex rel. Edmisten v. J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977), decided prior to the 1977 amendment.

The language of subsection (b) reveals that the General Assembly is concerned with openness and fairness in those activities which characterize a party as a "seller." Debt collection is not an activity necessarily typical of nor unique to sellers. It is rather an activity descriptive of creditors. An individual or a company may conduct the activities of both seller and creditor but it is only those activities surrounding the "sale" that are regulated by this section. State ex rel. Edmisten v. J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977), decided prior to the 1977 amendment.

Recovery for Unfair Methods of Competition Perpetrated By Insurers. — Plaintiff can recover damages under this section even though unfair methods of competition perpetrated by persons engaged in the business of insurance are regulated by the insurance statutes, § 58-54.1 et seq., which do not provide for civil damage actions. Ray v. United Family Life Ins. Co., 430 F. Supp. 1353 (W.D.N.C. 1977).

Proof of fraud would necessarily constitute a violation of the prohibition against unfair and deceptive acts; however, the converse is not always true. Hardy v. Toler, 288 N.C. 303, 218 S.E.2d 342 (1975).

Stipulated Facts Constituting Violation. — Ordinarily it would be for the jury to determine the facts, and based on the jury's finding, the court would then determine as a matter of law whether the defendant engaged in unfair or deceptive acts or practices in the conduct of trade or commerce. However, where the parties stipulated certain facts, the Supreme Court, based on these facts, held as a matter of law that the false representations made by defendants to plaintiff constituted unfair or deceptive acts or practices in commerce contrary to the provisions of this section, and treble damages should have been awarded as provided by § 75-16 in the amount of \$1800. Hardy v. Toler, 288 N.C. 303, 218 S.E.2d 342 (1975).

Applied in Smith v. Ford Motor Co., 26 N.C. App. 181, 215 S.E.2d 376 (1975); Harrington Mfg. Co. v. Powell Mfg. Co., 26 N.C. App. 414, 216 S.E.2d 379 (1975).

Cited in Smith v. Ford Motor Co., 289 N.C. 71, 221 S.E.2d 282 (1976); Powell Mfg. Co. v. Harrington Mfg. Co., 30 N.C. App. 97, 226 S.E.2d 173 (1976); Parsons v. Bailey, 30 N.C. App. 497, 227 S.E.2d 166 (1976).

§ 75-2. Any restraint in violation of common law included.

Applied in Forrest Paschal Mach. Co. v. Milholen, 27 N.C. App. 678, 220 S.E.2d 190 (1975).

§ 75-4. Contracts to be in writing.

A covenant not to compete is enforceable in equity if it is (1) in writing, (2) entered into at the time and as a part of the contract of employment, (3) based on valuable considerations, (4) reasonable both as to time and territory embraced in the restrictions, (5) fair to the parties and (6) not against public policy. *Forrest Paschal Mach. Co. v. Milholen*, 27 N.C. App. 678, 220 S.E.2d 190 (1975).

New Contract Required. — When the relationship of employer and employee is already established without a restrictive covenant, any agreement thereafter not to compete must be in the nature of a new contract based upon a new consideration. *Forrest Paschal Mach. Co. v. Milholen*, 27 N.C. App. 678, 220 S.E.2d 190 (1975).

§ 75-7. Persons encouraging violation guilty.

Applied in *State ex rel. Edmisten v. J.C. Penney Co.*, 292 N.C. 311, 233 S.E.2d 895 (1977).

§ 75-8. Continuous violations separate offenses.

Applied in *Thomas v. Petro-Wash, Inc.*, 429 F. Supp. 808 (M.D.N.C. 1977).

§ 75-9. Duty of Attorney General to investigate.

Power to Attorney General to Investigate. — Although this section empowers the Attorney General to prosecute under applicable criminal and civil statutes, the power to investigate under this Chapter is not subject to the restrictions

imposed upon criminal discovery under the Criminal Procedure Act, § 15A-908, or upon civil discovery under the Rules of Civil Procedure, § 1A-1, Rule 26(c). In *re Investigation by Att'y Gen.*, 30 N.C. App. 585, 227 S.E.2d 645 (1976).

§ 75-10. Power to compel examination.

Stated in *In re Investigation by Att'y Gen.*, 30 N.C. App. 585, 227 S.E.2d 645 (1976).

§ 75-11. Person examined exempt from prosecution.

Cited in *In re Investigation by Att'y Gen.*, 30 N.C. App. 585, 227 S.E.2d 645 (1976).

§ 75-12. Refusal to furnish information; false swearing.

Stated in *In re Investigation by Att'y Gen.*, 30 N.C. App. 585, 227 S.E.2d 645 (1976).

§ 75-15.1. Restoration of property and cancellation of contract.

This section is a companion enforcement provision to § 75-1.1. *State ex rel. Edmisten v.*

J.C. Penney Co., 292 N.C. 311, 233 S.E.2d 895 (1977).

Applicability of Section to Debt Collection Activities. — Inherent in the remedy of this section is the intent to prohibit only unfair and deceptive practices affecting sales. If the legislature had intended to cover debt collection activities it would have provided for the

rescission of contracts not only where the contract is obtained as a result of a violation, but also where a violation occurs which is unrelated to the contract's formation. *State ex rel. Edmisten v. J.C. Penney Co.*, 292 N.C. 311, 233 S.E.2d 895 (1977).

§ 75-15.2. Civil penalty. — In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, specifically prohibited by a court order or knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant five thousand dollars (\$5,000) for each violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. Any penalty so assessed shall be paid to the General Fund of the State of North Carolina. (1977, c. 747, s. 3.)

Editor's Note. — Session Laws 1977, c. 747, s. 5, provides in part that the act shall not apply to pending litigation.

§ 75-16. Civil action by person injured; treble damages. — If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict. (1913, c. 41, s. 14; C. S., s. 2574; 1969, c. 833; 1977, c. 707.)

Editor's Note. —

The 1977 amendment deleted "by a jury" following "if damages are assessed."

For comment entitled, "Attacking the 'Forfeiture as Liquidated Damages' Clause in North Carolina Installment Land Sales Contracts as an Equitable Mortgage, Penalty and Unfair and Deceptive Trade Practice," see 7 N.C. Cent. L.J. 370 (1976).

Legislative Intent. — It was the clear intention of the General Assembly in enacting § 75-1.1 and this section, among other things, to declare deceptive acts or practices in the conduct of any trade or commerce in North Carolina unlawful, to provide civil means to maintain ethical standards of dealings between persons engaged in business and the consuming public within this State and to enable a person injured by deceptive acts or practices to recover treble damages from a wrongdoer. *Hardy v. Toler*, 24

N.C. App. 625, 211 S.E.2d 809, modified on other grounds, 288 N.C. 303, 218 S.E.2d 342 (1975).

Plaintiff was not entitled to treble damages under section where he sought to rescind the sale of a car and to recover the sale price on the ground the year model of the car had been misrepresented by the seller. *Taylor v. Triangle Porsche-Audi, Inc.*, 27 N.C. App. 711, 220 S.E.2d 806 (1975), cert. denied, 289 N.C. 619, 223 S.E.2d 396 (1976).

Punitive damages may be awarded only where the wrong is done willfully or under circumstances of rudeness, oppression or in a manner which evidences a reckless and wanton disregard of the plaintiff's rights. *Hardy v. Toler*, 288 N.C. 303, 218 S.E.2d 342 (1975).

Stated in *Ray v. United Family Life Ins. Co.*, 430 F. Supp. 1353 (W.D.N.C. 1977).

Cited in *Parsons v. Bailey*, 30 N.C. App. 497, 227 S.E.2d 166 (1976).

§ 75-27. Unsolicited merchandise. — Unless otherwise agreed, where unsolicited goods are delivered to a person, he has a right to refuse to accept delivery of the goods and is not bound to return such goods to the sender. If such unsolicited goods are addressed to and intended for the recipient, they shall be deemed a gift to the recipient, who may use them or dispose of them in any manner without any obligation to the sender. (1969, c. 70, s. 1; 1977, c. 498.)

Editor's Note. — The 1977 amendment deleted "by mail or common carrier" following "goods are delivered" in the first sentence.

§§ 75-30 to 75-49: Reserved for future codification purposes.

ARTICLE 2.

Prohibited Acts by Debt Collectors.

§ 75-50. Definitions. — The following words and terms as used in this Article shall be construed as follows:

- (1) "Consumer" means any natural person who has incurred a debt or alleged debt for personal, family, household or agricultural purposes.
- (2) "Debt" means any obligation owed or due or alleged to be owed or due from a consumer.
- (3) "Debt collector" means any person engaging, directly or indirectly, in debt collection from a consumer except those persons subject to the provisions of Article 9, Chapter 66 of the General Statutes. (1977, c. 747, s. 4.)

Editor's Note. — Session Laws 1977, c. 747, s. 5, provides in part that the act shall not apply to pending litigation.

§ 75-51. Threats and coercion. — No debt collector shall collect or attempt to collect any debt alleged to be due and owing from a consumer by means of any unfair threat, coercion, or attempt to coerce. Such unfair acts include, but are not limited to, the following:

- (1) Using or threatening to use violence or any illegal means to cause harm to the person, reputation or property of any person.
- (2) Falsely accusing or threatening to accuse any person of fraud or any crime, or of any conduct that would tend to cause disgrace, contempt or ridicule.
- (3) Making or threatening to make false accusations to another person, including any credit reporting agency, that a consumer has not paid, or has willfully refused to pay a just debt.
- (4) Threatening to sell or assign, or to refer to another for collection, the debt of the consumer with an attending representation that the result of such sale, assignment or reference would be that the consumer would lose any defense to the debt or would be subjected to harsh, vindictive, or abusive collection attempts.
- (5) Representing that nonpayment of an alleged debt may result in the arrest of any person.
- (6) Representing that nonpayment of an alleged debt may result in the seizure, garnishment, attachment, or sale of any property or wages unless such action is in fact contemplated by the debt collector and permitted by law.

- (7) Threatening to take any action not in fact taken in the usual course of business, unless it can be shown that such threatened action was actually intended to be taken in the particular case in which the threat was made.
- (8) Threatening to take any action not permitted by law. (1977, c. 747, s. 4.)

§ 75-52. Harassment. — No debt collector shall use any conduct, the natural consequence of which is to oppress, harass, or abuse any person in connection with the attempt to collect any debt. Such unfair acts include, but are not limited to, the following:

- (1) Using profane or obscene language, or language that would ordinarily abuse the typical hearer or reader.
- (2) Placing collect telephone calls or sending collect telegrams unless the caller fully identifies himself and the company he represents.
- (3) Causing a telephone to ring or engaging any person in telephone conversation with such frequency as to be unreasonable or to constitute a harassment to the person under the circumstances or at times known to be times other than normal waking hours of the person.
- (4) Placing telephone calls or attempting to communicate with any person, contrary to his instructions, at his place of employment, unless the debt collector does not have a telephone number where the consumer can be reached during the consumer's nonworking hours. (1977, c. 747, s. 4.)

§ 75-53. Unreasonable publication. — No debt collector shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following:

- (1) Any communication with any person other than the debtor or his attorney, except:
 - a. With the written permission of the debtor or his attorney;
 - b. To persons employed by the debt collector, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the information;
 - c. To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor and lives in the same household with such parent;
 - d. For the sole purpose of locating the debtor, if no indication of indebtedness is made;
 - e. Through legal process.
- (2) Using any form of communication which ordinarily would be seen or heard by any person other than the consumer that displays or conveys any information about the alleged debt other than the name, address and phone number of the debt collector except as otherwise provided in this Article.
- (3) Disclosing any information relating to a consumer's debt by publishing or posting any list of consumers, except for credit reporting purposes and the publication and distribution of otherwise permissible "stop lists" to the point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through legal process. (1977, c. 747, s. 4.)

§ 75-54. Deceptive representation. — No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

- (1) Communicating with the consumer other than in the name (or unique pseudonym) of the debt collector and the person or business on whose behalf the debt collector is acting or to whom the debt is owed.
- (2) Failing to disclose in all communications attempting to collect a debt that the purpose of such communication is to collect a debt.
- (3) Falsely representing that the debt collector has in his possession information or something of value for the consumer.
- (4) Falsely representing the character, extent, or amount of a debt against a consumer or of its status in any legal proceeding; falsely representing that the collector is in any way connected with any agency of the federal, State or local government; or falsely representing the creditor's rights or intentions.
- (5) Using or distributing or selling any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source.
- (6) Falsely representing that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges.
- (7) Falsely representing the status or true nature of the services rendered by the debt collector or his business. (1977, c. 747, s. 4.)

§ 75-55. Unconscionable means. — No debt collector shall collect or attempt to collect any debt by use of any unconscionable means. Such means include, but are not limited to, the following:

- (1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgement of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.
- (2) Collecting or attempting to collect from the consumer all or any part of the debt collector's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge.
- (3) Communicating with a consumer (other than a statement of account used in the normal course of business) whenever the debt collector has been notified by the consumer's attorney that he represents said consumer.
- (4) Bringing suit against the debtor in a county other than that in which the debt was incurred or in which the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim. (1977, c. 747, s. 4.)

§ 75-56. Application. — The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article. Notwithstanding the provisions of G.S. 75-15.2, 75-16, and 75-16.1, civil penalties in excess of one thousand dollars (\$1,000) shall not be imposed, nor shall damages be trebled or attorney's fees assessed for any violation under this Article nor shall the provisions of this Article be construed to confer any right of private action not already available at common law or by means of other specific statutory authorization. (1977, c. 747, s. 4.)

Chapter 75A.**Boating and Water Safety.****Article 1.****Boating Safety Act.**

Sec.

75A-2. Definitions.

75A-5. Application for numbers; fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer of interest, abandonment, etc.; change of address; unauthorized numbers.

75A-5.1. Commercial fishing boats; renewal of number.

75A-6. Classification and required lights and equipment; rules and regulations.

Sec.

75A-8. Boat liveries.

75A-9.1. Muffling devices — Motorboats.

75A-15. Regulations on water safety; adoption of the Uniform Waterway Marking System.

75A-16. Filing and publication of rules and regulations; furnishing copies to owners.

75A-17. Enforcement of Chapter.

Article 2.**North Carolina Water Safety Committee.**

75A-21. Terms and appointment of members.

ARTICLE 1.***Boating Safety Act.***

§ 75A-2. Definitions. — As used in this Chapter, unless the context clearly requires a different meaning:

(1) "Motorboat" means any vessel equipped with propulsion machinery of any type, whether or not such machinery is the principal source of propulsion: Provided, that "propulsion machinery" as used in this section shall not include an electric motor when used as the only means of mechanical propulsion of any vessel: Provided further, that the term "motorboat" shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.

(1975, c. 340, s. 1.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, rewrote subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

§ 75A-5. Application for numbers; fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer of interest, abandonment, etc.; change of address; unauthorized numbers. — (a) The owner of each motorboat requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner of the motorboat, or his agent, and shall be accompanied by a fee of three dollars (\$3.00) for a one-year period or by a fee of seven dollars and fifty cents (\$7.50) for a three-year period. The applicant shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall have the same

entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the motorboat immediately following the number. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation. Provided, however, any person charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest.

(c) Should the ownership of a motorboat change, a new application form with fee of one dollar (\$1.00) shall be filed with the Wildlife Resources Commission and a new certificate bearing the same number shall be awarded in the manner as provided for in an original award of number. In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of one dollar (\$1.00). Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears therein is the owner of the boat referred to therein.

(h) Each certificate of number awarded pursuant to this Chapter must be renewed on or before January 1 of the year following the expiration of the period for which the motorboat was numbered; otherwise, such certificate shall lapse and be void. Application for renewal shall be submitted on forms approved by the Wildlife Resources Commission and shall be accompanied by a fee of three dollars (\$3.00) for a one-year period or by a fee of seven dollars and fifty cents (\$7.50) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing boats as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section.

(1975, c. 483, ss. 1, 2; 1977, c. 566.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, in subsection (a), substituted "owner of the motorboat, or his agent" for "owner, or his agent, of the motorboat" in the second sentence, added the language beginning "for a one-year period" at the end of that sentence, added the present third and seventh sentences, and added the language beginning "and a validation decal" to the end of the present fourth sentence. The amendment also, in subsection (h), substituted the language beginning "on or before January 1" and ending

"period for which the motorboat was numbered" for "each year on or before January 1" in the first sentence and inserted the language beginning "for a one-year period" and ending "three-year period" in the second sentence.

The 1977 amendment, effective July 1, 1977, substituted "one dollar (\$1.00)" for "fifty cents (50¢)" at the end of the second sentence of subsection (c).

As the rest of the section was not changed by the amendments, only subsections (a), (c) and (h) are set out.

§ 75A-5.1. Commercial fishing boats; renewal of number.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the boat shall submit, and the Wildlife Resources Commission shall require:

- (1) The regular application for renewal of the certificate of number of such boat, as provided by G.S. 75A-5;
- (2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the boat for which the application for renewal is made is a commercial fishing boat as herein defined; and

- (3) A receipt, signed by an authorized agent of the Department of Natural Resources and Community Development, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing boat license tax imposed by G.S. 113-152 has been paid for such boat for the period during which the application for renewal of the certificate of number is submitted.

(1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (3) of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 75A-6. Classification and required lights and equipment; rules and regulations.

(m) In the event that any of the regulations of subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of this section are in conflict with the equipment regulations of the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto, the Wildlife Resources Commission is hereby granted the authority to adopt such regulations as are necessary to conform with the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto.

(n) All boats propelled by machinery of 10 hp or less, which are operated on the public waters of this State, shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, and from one-half hour after sunset to one-half hour before sunrise shall carry a white light in the stern or shall have on board a hand flashlight in good working condition, which light shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision.

(1975, c. 340, s. 2; c. 483, s. 3.)

Editor's Note. —

The first 1975 amendment, effective Jan. 1, 1976, deleted, at the end of subsection (n), a proviso to the effect that the provisions of that subsection should not be construed so as to conflict with or repeal any of the other requirements or provisions of this Chapter.

The second 1975 amendment, effective Jan. 1, 1976, substituted "Federal Boat Safety Act of

1971 and the federal regulations adopted pursuant thereto" for "Federal Motorboat Act of 1958 as amended" twice in subsection (m).

As the rest of the section was not changed by the amendments, only subsections (m) and (n) are set out.

§ 75A-8. Boat liveries. — It shall be unlawful for the owner of a boat livery to rent a motorboat to any person unless the provisions of this Chapter have been complied with. It shall be the duty of owners of boat liveries to equip all motorboats rented as required by this Chapter. (1959, c. 1064, s. 8; 1975, c. 340, s. 3.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, substituted "motorboat" for "boat equipped with more than 10 horsepower" in the first sentence.

§ 75A-9.1. Muffling devices — Motorboats. — Every internal combustion engine with an open-air exhaust which is used on any motorboat and which has a capacity of operating at more than 4000 revolutions per minute shall have

effective muffling equipment installed on each exhaust manifold stack except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such motorboats while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race. This Article shall not apply to licensed commercial fishing boats. (1977, c. 737, s. 1.)

Editor's Note. — Session Laws 1977, c. 737, s. 2, makes this section effective Jan. 1, 1978.

§ 75A-10.1. Family purpose doctrine applicable.

Cited in *Williams v. Wachovia Bank & Trust Co.*, 292 N.C. 416, 233 S.E.2d 589 (1977).

§ 75A-15. Regulations on water safety; adoption of the Uniform Waterway Marking System.

(b) The agencies listed in this subsection may, but only after public notice, make formal application to the Wildlife Resources Commission for special regulations on local waters as to the matters listed in subsection (a) of this section. The agencies and waters in question are:

- (1) Any subdivision of this State, with reference to waters within its territorial limits.
- (2) The North Carolina Water Safety Committee, with reference to local areas of water defined by it which are found to be heavily used for water recreation purposes by persons from other areas of the State and as to which there is not coordinated local interest in regulation.

The Wildlife Resources Commission is authorized and empowered to adopt regulations as provided by Chapter 150A, Administrative Procedure Act, prohibiting entry of vessels into public swimming areas and establishing speed zones at public boat launching ramps, marinas, or boat service areas and on other congested water areas where there are demonstrated water safety hazards. Enforcement of such special regulations shall be dependent upon placement and maintenance of regulatory markers in accordance with the Uniform State Waterway Marking System by such agency or agencies as may be designated by the Wildlife Resources Commission.

(1977, c. 424.)

Editor's Note. — The 1977 amendment added the last paragraph of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 75A-16. Filing and publication of rules and regulations; furnishing copies to owners. — A copy of the regulations adopted pursuant to this Chapter, and of any amendments thereto, shall be filed in the office of the Wildlife Resources Commission and in the office of the clerks of the superior courts of the counties in which such boats are operated. Rules and regulations shall be published by the Wildlife Resources Commission in a convenient form, and a copy of such rules and regulations shall be furnished each owner who secures a certificate of number pursuant to this Chapter. (1959, c. 1064, s. 16; 1975, 2nd Sess., c. 983, s. 68.)

Editor's Note. — The 1975, 2nd Sess., amendment deleted "and in the office of the Secretary of State of North Carolina" following

"Wildlife Resources Commission" in the first sentence.

§ 75A-17. Enforcement of Chapter.

(b) In order to secure broader enforcement of the provisions of this Chapter, the Wildlife Resources Commission is authorized to enter into an agreement with the Department of Natural Resources and Community Development whereby the enforcement personnel of the Department shall assume responsibility for enforcing the provisions of this Chapter in the territory and area normally policed by such enforcement personnel and whereby the Wildlife Resources Commission shall contribute a share of the expense of such personnel according to a ratio of time and effort expended by them in enforcing the provisions of this Chapter, when such ratio has been agreed upon by both of the contracting agencies. Such agreement may be modified from time to time as conditions may warrant. (1959, c. 1064, s. 17; 1965, c. 957, s. 9; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As subsection (a) was not changed by the amendment, it is not set out.

ARTICLE 2.*North Carolina Water Safety Committee.***§ 75A-21. Terms and appointment of members.**

(e) In making his appointments the Governor shall provide for continuing membership on the Committee by at least one professional representative from each of the following agencies of the State:

- (1) The Department of Natural Resources and Community Development.
- (2) The Department of Public Instruction.
- (3) The Department of Natural Resources and Community Development.
- (4) The Department of Natural Resources and Community Development.
- (5) The North Carolina Wildlife Resources Commission.
- (6) The Department of Human Resources. (1969, c. 1093, s. 3; c. 1145, s. 1; 1973, c. 476, s. 128; c. 1262, ss. 23, 51, 86; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivisions (1), (3) and (4) of subsection (e).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

Chapter 75B.**Discrimination in Business.**

Sec.	Sec.
75B-1. Definitions.	75B-5. Remedies cumulative.
75B-2. Discrimination in business prohibited.	75B-6. Contracts void.
75B-3. Actions not prohibited.	75B-7. Chapter not exclusive.
75B-4. Enforcement.	

Editor's Note. — Session Laws 1977, c. 916, s. 3, makes this Chapter effective Jan. 1, 1978.

§ 75B-1. Definitions. — The following words and phrases as used in this Chapter shall have the following meaning unless the context clearly requires otherwise:

- (1) "Business," the manufacture, processing, sale, purchase, licensing, distribution, provision, or advertising of goods or services, or extension of credit, or issuance of letters of credit, or any other aspect of business;
- (2) "Foreign government," all governments and political subdivisions and the instrumentalities thereof, excepting the government, political subdivisions, and instrumentalities of the United States and the states, commonwealths, territories and possessions of the United States, and the District of Columbia;
- (3) "Foreign person," any person whose principal place of residence, business or domicile is outside the United States, or any person controlled directly or indirectly by such person or persons; provided, however, that no person shall be deemed a foreign person if after reasonable inquiry and due diligence it cannot be determined that any such person has a principal place of residence, business, or domicile outside the United States or is controlled by such person;
- (4) "Foreign trade relationships," the dealing with or in any foreign country of any person, or being listed on a boycott list or compilation of unacceptable persons maintained by a foreign government, foreign person, or international organization;
- (5) "International organization," any association or organization, with the exception of labor associations, or organizations of which more than a majority of the membership consists of foreign persons or foreign governments; and
- (6) "Persons," one or more of the following or their agents, employees, servants, representatives, directors, officers, partners, members, managers, superintendents, and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and all other entities recognized at law by this State. (1977, c. 916, s. 1.)

Cross Reference. — For statute of limitation for an action under this Chapter, see § 1-52(14).

Editor's Note. — Session Laws 1977, c. 916, s. 3, makes this Chapter effective Jan. 1, 1978.

§ 75B-2. Discrimination in business prohibited. — It shall be unlawful for any person doing business in the State or for the State of North Carolina:

- (1) To enter into any agreement, contract, arrangement, combination, or understanding with any foreign government, foreign person, or international organization, which requires such person or the State to refuse, fail, or cease to do business in the State with any other person who is domiciled or has a usual place of business in the State, based upon such other person's race, color, creed, religion, sex, national origin or foreign trade relationships;
- (2) To execute in the State any contract with any foreign government, foreign person, or international organization which requires such person or the State to refuse, fail or cease to do business with another person who is domiciled or has a usual place of business in the State, based upon such other person's race, color, creed, religion, sex, national origin, or foreign trade relationships;
- (3) To refuse, fail or cease to do business in the State with any other person who is domiciled or has a usual place of business in the State or with the State when such refusal, failure, or cessation results directly or indirectly from an agreement, contract, arrangement, combination, or understanding between the person who refuses, fails or ceases to do business and any foreign government, foreign person, or international organization, and is based upon such other person's race, color, creed, religion, sex, national origin or foreign trade relationships;
- (4) To discharge or to fail, refuse or cease to hire, promote or appoint in the State any other person who is domiciled in the State to any position of employment or employment responsibility when such refusal, failure or cessation results from an agreement, contract, arrangement, combination, or understanding with any foreign government, foreign person, or international organization and is based upon such other person's race, color, creed, religion, sex, national origin, or foreign trade relationships;
- (5) To willfully and knowingly aid or abet any other person to engage in conduct which is prohibited by this Chapter. (1977, c. 916, s. 1.)

§ 75B-3. Actions not prohibited. — It shall not be unlawful under this Chapter:

- (1) To engage in conduct required by or expressly authorized by acts of the United States Congress, a United States treaty, a United States regulation, or a United States executive order;
- (2) To enter into any agreement with an international organization entirely composed of member governments or their contracting representatives which requires that a preference or priority be given to the citizens or products of one or more of such member governments;
- (3) To enter into any agreement with respect to the insuring, handling, or shipping of goods, or choice of carrier while in international transit. (1977, c. 916, s. 1.)

§ 75B-4. Enforcement. — The Attorney General may institute a civil action to prevent or restrain violations of G.S. 75B-2.

A person injured by a violation of G.S. 75B-2 may maintain an action for damages or for an injunction or both against any person who has committed the violation.

In a proceeding under this section, the court shall determine whether a violation has been committed and enter any judgment or decree necessary to remove the effects of any violation it finds and to prevent continuation or renewal of the violation in the future.

If an application for an injunction is granted, after due notice to all parties, a hearing thereon, and as a disposition on the merits of such application, the complainant may be awarded costs and reasonable attorney's fees.

In an action for damages, if there is a willful violation of G.S. 75B-2 the person injured may be awarded up to three times the amount of actual damages which results from the violation, with costs and reasonable attorney's fees. (1977, c. 916, s. 1.)

§ 75B-5. Remedies cumulative. — The remedies provided in this Chapter are cumulative. (1977, c. 916, s. 1.)

§ 75B-6. Contracts void. — Any provision of any contract or other document or other agreement which violates G.S. 75B-2 or which, if complied with by the person intended to be bound by the provision, would cause a violation of G.S. 75B-2 shall be null and void as being against the public policy of the State. (1977, c. 916, s. 1.)

§ 75B-7. Chapter not exclusive. — This Chapter shall not be deemed to supersede, restrict or otherwise limit the continuing applicability of the antitrust or anti-discrimination laws of the State. (1977, c. 916, s. 1.)

Chapter 76.**Navigation.****Article 1.****Cape Fear River.**

Sec.

76-1. Board of commissioners of navigation and pilotage.

76-14. Rates of pilotage.

76-18. [Repealed.]

Article 2.**Beaufort Harbor.**

76-25 to 76-34. [Repealed.]

Article 3.**Bogue Inlet.**

76-35, 76-36. [Repealed.]

Article 4.**Hatteras and Ocracoke.**

Sec.

76-37 to 76-39. [Repealed.]

Article 6.**Morehead City Navigation and Pilotage Commission.**

76-59. Board of commissioners of navigation and pilotage.

State Government Reorganization. — All navigation and pilotage commissions established by this Chapter were transferred to the Department of Commerce by a Type I transfer

by Session Laws 1977, c. 198, s. 6, as amended by Session Laws 1977, c. 802, s. 50.46, effective July 1, 1977.

ARTICLE 1.***Cape Fear River.***

§ 76-1. Board of commissioners of navigation and pilotage. — A board of commissioners of navigation and pilotage for the Cape Fear River and Bar, to consist of five members, at least four of whom shall be residents of New Hanover County, and none of whom shall be licensed pilots, is hereby created. The members of the board shall be appointed by the Governor and their terms of office shall begin on the fifteenth day of April of the year in which they are appointed and continue for four years and until their successors shall be appointed and qualified. They shall be and are hereby declared to be commissioners for a special purpose, within the purview of Sec. 7, Article XIV, of the Constitution of North Carolina. It shall be the duty of the Governor to appoint, on or before the fifth day of April, 1921, and on or before the fifth day of April of every fourth year thereafter, the members of said board of commissioners. A majority of the board shall constitute a quorum and may act in all cases. The board shall have power to fill vacancies in its membership as they occur during their term, to appoint a clerk to record in a book, rules, orders and proceedings of the board, and the board shall have authority in all matters that may concern the navigation of waters from seven miles above Negrohead Point downwards, and out of the bar and inlets. (1921, c. 79, s. 1; C. S., s. 6943(a); 1975, c. 23, s. 2.)

Cross Reference. — As to transfer of the board of commissioners of navigation and pilotage for the Cape Fear River to the Department of Transportation, see § 143B-354.

Editor's Note. —

The 1975 amendment, effective May 5, 1975, deleted the former last sentence of the section, which provided for the appointment of a harbor master for the port of Wilmington.

Session Laws 1975, c. 23, s. 1, provides: "The position and office of harbor master for the port of Wilmington is hereby abolished."

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c.

712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-2. Rules to regulate pilotage service.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-3. Examination and licensing of pilots.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-4. Appointment and regulation of pilots' apprentices.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-5. Classes of licenses issued.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-6. Renewal of license; license fee.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-7. Expenses of the board.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-8. Pilots to give bond.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-9. Permission to run as pilots on steamers; other ports.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-10. Cancellation of licenses.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-11. Jurisdiction over disputes as to pilotage.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-12. Retirement of pilots from active service.

Repeal of Section. — This section is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-14. Rates of pilotage. — (a) Pilotage charges for vessels, inbound or outbound, shall be based upon the gross tonnage and draft of each vessel in the following general classifications:

- | | |
|--|------------------------------------|
| (1) Less than 2,000 gross tons | \$12.00 per draft ft.
(one way) |
| (2) 2,000 gross tons or more but less than 11,000 | \$13.50 per draft ft.
(one way) |
| (3) 11,000 gross tons or more but less than 20,000 | \$15.00 per draft ft.
(one way) |
| (4) 20,000 gross tons or more but less than 29,000 | \$16.50 per draft ft.
(one way) |
| (5) 29,000 gross tons or more | \$18.00 per draft ft.
(one way) |

In addition to the regular charges on draft stated above, vessels shall be charged one and two-tenths cents (1.2¢) per maximum gross ton (\$12.00 per M; or fraction thereof).

(b) The charge for a fraction of a draft foot shall be computed from the next half-foot.

(c) There shall be a minimum of 15 draft feet for each vessel in determining pilotage charges.

(d) The measurement described herein shall be in United States feet and inches and registered gross tons and shall be furnished to the pilot by the master of the vessel or her agent for the purposes of computing pilotage fees.

(e) The charge for towing vessels with a tow shall be the total gross tonnage of all vessels in the tow and the draft will be that of the deepest vessel. The charge for towing vessels with a tow requiring two pilots (one on the towing vessel and one on the vessel in tow) shall be the regular pilotage charge for each vessel.

(f) The board of commissioners of navigation and pilotage for the Cape Fear River and Bar shall be the sole arbitrators of any question arising concerning any pilotage charges.

(g) Pilotage charges for shifting of vessels shall be as follows:

- | | |
|---|----------|
| (1) Less than five miles | \$ 50.00 |
| (2) Five miles or more but less than 10 | \$ 75.00 |
| (3) Ten miles or more but less than 15 | \$100.00 |
| (4) Fifteen miles and over | \$125.00 |

A vessel shifting "dead" (without power) will be charged double the regular shifting fee.

(h) The charge for detention of a pilot on board because of weather conditions preventing the pilot from being removed shall be fifty dollars (\$50.00) per day, plus quarters equal to a deck officer, plus first-class transportation cost for a return trip to Wilmington.

(i) All vessels calling at any Cape Fear River port which require pilotage will pay full pilotage charges regardless of the reason for the call. (1921, c. 79, ss. 13, 14; C. S., ss. 6943(m), (n); 1927, c. 158, s. 5; 1959, c. 1042; 1971, c. 558, s. 2; c. 861, s. 2; 1975, c. 198; 1977, c. 700, ss. 1, 2.)

Editor's Note. — The 1975 amendment, substituted "15 draft feet" for "10 draft feet" in subsection (c).
effective July 1, 1975, rewrote this section.

The 1977 amendment, effective July 1, 1977, added the second sentence of subsection (a) and

§ 76-18: Repealed by Session Laws 1975, c. 23, s. 3, effective May 5, 1975.

Editor's Note. — Session Laws 1975, c. 23, s. 1, effective May 5, 1975, provides: "The position and office of harbor master for the port of Wilmington is hereby abolished."

ARTICLE 2.

Beaufort Harbor.

§§ 76-25 to 76-34: Repealed by Session Laws 1975, c. 716, s. 4, effective July 1, 1975.

ARTICLE 3.

Bogue Inlet.

§§ 76-35, 76-36: Repealed by Session Laws 1975, c. 716, s. 4, effective July 1, 1975.

ARTICLE 4.

Hatteras and Ocracoke.

§§ 76-37 to 76-39: Repealed by Session Laws 1975, c. 716, s. 4, effective July 1, 1975.

ARTICLE 6.

Morehead City Navigation and Pilotage Commission.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose functions is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 76-59. Board of commissioners of navigation and pilotage. — A board of commissioners of navigation and pilotage for Old Topsail Inlet and Beaufort Bar to consist of three members, none of whom shall be licensed pilots, is hereby created. The members of the board shall be appointed by the Morehead City port commission, and their terms of office shall begin on the fifteenth day of July of the year in which they are appointed and continue for four years and until their successors shall be appointed and qualified. They shall be and are hereby declared to be commissioners for a special purpose, within the purview of Sec. 7, Article XIV of the Constitution of North Carolina. It shall be the duty of the Morehead City port commission to appoint on or before the first day of July, 1947, and on or before the first day of July every fourth year thereafter, the members of said board of commissioners. A majority of the board shall constitute a quorum and may act in all cases. The board shall have power to fill vacancies in its membership as they occur during their term, to appoint a clerk to record in a book, rules, orders and proceedings of the board, and the board shall have authority in all matters that may concern the navigation of waters from the Beaufort Sea Buoy to Morehead City, and out of the bar and inlet including Beaufort Harbor. (1947, c. 748; 1975, c. 716, s. 4.)

Cross Reference. — As to transfer of the board of commissioners of navigation and pilotage for Old Topsail Inlet and Beaufort Bar to the Department of Transportation, see § 143B-354.

Session Laws 1951, c. 776, s. 2, transfers to the State Ports Authority all powers and functions of the Morehead City port commission.

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added "including Beaufort Harbor" at the end of the section.

Chapter 77.

Rivers and Creeks.

Article 2.

Sec.

Obstructions in Streams.

77-14. Obstructions in streams and drainage ditches.

Sec.

77-13. Obstructing streams a misdemeanor.

ARTICLE 2.

Obstructions in Streams.

§ 77-13. Obstructing streams a misdemeanor. — If any person shall willfully fell any tree, or willfully put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, and whereby the navigation of such stream by any raft or flat may be impeded, delayed, or prevented, the person so offending shall be guilty of a misdemeanor, and fined not to exceed fifty dollars (\$50.00), or imprisoned not to exceed 30 days. Nothing in this section shall prevent the erection of fish dams or hedges which do not extend across more than two thirds of the width of any stream where erected, but if extending over more than two thirds of the width of any stream, the said penalties shall attach. This section may be enforced by specially commissioned forest law-enforcement officers of the Department of Natural Resources and Community Development. (1872-3, c. 107, ss. 1, 2; Code, s. 1123; Rev., s. 3559; C. S., s. 7377; 1975, c. 509; 1977, c. 771, s. 4.)

Editor's Note. — The 1975 amendment added the third sentence.

The 1977 amendment substituted "Natural Resources and Community Development" for

"Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 77-14. Obstructions in streams and drainage ditches. — If any person, firm or corporation shall fell any tree or put any slabs, stumpage, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine or ditch, or in any other outlet which serves to remove water from any land whatsoever whereby the natural and normal drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall be guilty of a misdemeanor and upon conviction thereof shall be fined up to five hundred dollars (\$500.00) or imprisoned for up to six months, or both, in the discretion of the court: Provided, however, nothing herein shall prevent the construction of any dam or weir not otherwise prohibited by any valid local or State statute or regulation. This section may be enforced by specially commissioned forest law-enforcement officers of the Department of Natural Resources and Community Development (1953, c. 1242; 1957, c. 524; 1959, cc. 160, 1125; 1961, c. 507; 1969, c. 790, s. 1; 1975, c. 509; 1977, c. 771, s. 4.)

Editor's Note. —

The 1975 amendment added the second sentence.

The 1977 amendment substituted "Natural Resources and Community Development" for

"Natural and Economic Resources" in the last sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Chapter 78A.

North Carolina Securities Act.

Article 3.

Exemptions.

Sec.

78A-17. Exempt transactions.

78A-18. Denial and revocation of exemptions.

Article 4.

Registration of Securities.

78A-25. Registration by notification.

78A-27. Registration by qualification.

Article 5.

Registration of Dealers and Salesmen.

78A-36. Registration requirement.

Article 7.

Civil Liability and Criminal Penalties.

Sec.

78A-56. Civil liabilities.

Article 8.

Miscellaneous Provisions.

78A-63. Scope of the Chapter; service of process.

ARTICLE 3.

Exemptions.

§ 78A-17. Exempt transactions. — The following transactions are exempted from G.S. 78A-24 and 78A-49(d):

- (14) Any offer, sale or issuance of securities pursuant to an investment contract or stock option plan which is exempt under the provisions of G.S. 78A-16(11) of this Chapter;
- (15) Any offer or sale of limited partnership interests in a partnership organized under the North Carolina Uniform Limited Partnership Act for the sole purpose of constructing, owning and operating a low and moderate income rental housing project located in North Carolina if the total amount of the offering and the total number of limited partners, both within and without this State for each such partnership, does not exceed five hundred thousand dollars (\$500,000) and 100 respectively. This exemption shall be allowed without limitation as to (i) the number, either in total or within any time period, of separate partnerships which may be formed by the same general partner or partners, sponsors or individuals in which partnership interests are offered; (ii) the period over which such offerings can be made; (iii) the amount of each limited partner's investment; or (iv) the period over which such investment is payable to the partnership. For purposes of this subdivision (15), the term "low and moderate rental housing project" means:
 - a. Any housing project with respect to which a mortgage is insured or guaranteed under section 221(d)(3) or 221(d)(4) or 236 of the National Housing Act, or any housing project financed or assisted by direct loan, mortgage insurance or guaranty, or tax abatement under similar provisions of federal, State or local laws, whether now existing or hereafter enacted; or
 - b. Any housing project, some or all of the units of which are available for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of other federal, State or local

law authorizing similar levels of subsidy for lower income families, whether now existing or hereafter enacted; or

- c. Any housing project with respect to which a loan is made, insured or guaranteed under Title V, section 515, of the Housing Act of 1949, or under similar provisions of other federal, State or local laws, whether now existing or hereafter enacted. (1925, c. 190, s. 4; 1927, c. 149, s. 4; 1935, cc. 90, 154; 1955, c. 436, s. 3; 1959, c. 1185; 1967, c. 1233, ss. 2, 3; 1971, c. 572, s. 1; 1973, c. 1380; 1977, c. 162.)

Editor's Note. — The 1977 amendment added subdivision (15) and made a change in punctuation in subdivision (14).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (14) and (15) are set out.

Amendment Effective April 1, 1978. — Session Laws 1977, c. 610, s. 1, effective April 1, 1978, will amend subdivision (9) to read as follows:

“(9)

- a. Any transaction pursuant to an offer directed by the offeror to not more than 25 persons (other than those designated in subdivision (8)) in this State during any period of 12 consecutive months, whether or not the offeror or any of the

offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment; provided, however, the Administrator may by rule or order as to any security or transaction, withdraw or further condition this exemption; or

- b. Any transaction that is exempted from the provisions of section 5 of the Securities Act of 1933 by virtue of any rule, or rules, promulgated, either before or after April 1, 1975, by the Securities and Exchange Commission under section 4(2) of such act;”

§ 78A-18. Denial and revocation of exemptions.

(b) In any proceeding under this Chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. (1925, c. 190, ss. 5, 11; 1927, c. 149, ss. 5, 11; 1973, c. 1380; 1975, c. 19, s. 20.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting “proving” for “providing” in subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 4.

Registration of Securities.

§ 78A-25. Registration by notification.

(c) If no stop order is in effect and no proceeding is pending under G.S. 78A-29, a registration statement under this section automatically becomes effective at three o'clock Raleigh, North Carolina time in the afternoon of the tenth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Administrator determines. (1927, c. 149, s. 8; 1955, c. 436, s. 6; 1973, c. 1380; 1975, c. 144, s. 1.)

Editor's Note. — The 1975 amendment substituted “Raleigh, North Carolina time” for “Eastern Standard Time” in subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 78A-27. Registration by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in G.S. 78A-28(c) and the consent to service of process required by G.S. 78A-63(f):

- (1) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
- (2) With respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;
- (3) With respect to persons covered by subdivision (2): the remuneration paid during the past 12 months or fiscal year and estimated to be paid during the next fiscal year, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;
- (4) With respect to any person owning of record or beneficially if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (2) other than his occupation;
- (5) With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;
- (6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;
- (7) The capitalization and long-term debt (on both current and a pro forma basis) of the issuer and any significant subsidiary including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past three years or is obligated to issue any of its securities;
- (8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in

connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

- (9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amount of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);
- (10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (2), (4), (5), (6), or (8) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;
- (11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);
- (12) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;
- (13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
- (14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;
- (15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;
- (16) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and

analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

- (17) Such additional information as the Administrator requires by rule or order.

(1975, c. 19, s. 21.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "or" for "of" preceding "any significant subsidiary" in subdivision (6) of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 5.

Registration of Dealers and Salesmen.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 78A-36. Registration requirement.

(b) It is unlawful for any dealer or issuer to employ a salesman unless the salesman is registered. The registration of a salesman is not effective during any period when he is not associated with a particular dealer registered under this Chapter or a particular issuer. When a salesman begins or terminates those activities which make him a salesman, the salesman as well as the dealer or issuer shall promptly notify the Administrator.

The Administrator may by rule or order require the return of a salesman's license upon the termination of those activities which make him a salesman or, if such return is impossible, require a bond or evidence satisfactory to the Administrator of such impossibility.

(1975, c. 144, s. 2.)

Editor's Note. — The 1975 amendment inserted "a bond or" near the end of the second paragraph of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 6.

Administration and Review.

§ 78A-46. Investigations and subpoenas.

Amendment Effective April 1, 1978. —
Session Laws 1977, c. 610, s. 2, effective April 1,
1978, will repeal subsection (d).

§ 78A-48. Judicial review of orders.

Amendment Effective April 1, 1978. — 1978, will substitute “any county” for “Wake
Session Laws 1977, c. 610, s. 3, effective April 1, County” in the first sentence of subsection (a).

ARTICLE 7.

Civil Liability and Criminal Penalties.

§ 78A-56. Civil liabilities. — (a) Any person who

- (1) Offers or sells a security in violation of G.S. 78A-10(b), 78A-24, or 78A-36(a), or of any rule or order under G.S. 78A-49(d) which requires the affirmative approval of sales literature before it is used, or of any condition imposed under G.S. 78A-27(d) or 78A-28(g), or
- (2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the purchaser not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and did not act in reckless disregard, of the untruth or omission, is liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent (6%) per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition.

(b) Any person who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the seller not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security.

(c) Every person who directly or indirectly controls a person liable under subsection (a) or (b), every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the act or transaction, and

every dealer or salesman who materially aids in the sale are also liable jointly and severally with and to the same extent as such person, unless the person who is so liable sustains the burden of proof that he did not know, and did not act in reckless disregard, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(j) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or G.S. 78A-37(d). (1925, c. 190, s. 23; 1927, c. 149, s. 23; 1955, c. 436, s. 10; 1971, c. 572, s. 2; 1973, c. 1380; 1975, c. 19, s. 22; c. 144, s. 3; 1977, c. 781, s. 2.)

Editor's Note. — The first 1975 amendment corrected an error in the 1973 act by substituting "G.S. 78A-37(d)" for "G.S. 78A-37(e)" at the end of subsection (j).

The second 1975 amendment inserted "(the seller not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission" near the middle of the first sentence of subsection (b).

The 1977 amendment substituted "and did not act in reckless disregard" for "and in the exercise of reasonable care could not have known" in the first sentence of subdivision (a) (2) and in the first sentence of subsection (c).

As the rest of the section was not changed by the amendments, only subsections (a), (b), (c) and (j) are set out.

ARTICLE 8.

Miscellaneous Provisions.

§ 78A-63. Scope of the Chapter; service of process.

(b) Sections 78A-8, 78A-10, 78A-36(a) and 78A-56(b) apply to persons who buy or offer to buy when (i) an offer to buy is made in this State, or (ii) an offer to sell is made and accepted in this State.

(1975, c. 144, s. 4.)

Editor's Note. — The 1975 amendment inserted the reference to § 78A-56(b) in subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

Chapter 78B.

Tender Offer Disclosure Act.

Sec.		Sec.	
78B-1.	Title.	78B-6.	Civil liabilities.
78B-2.	Definitions.	78B-7.	Injunctions.
78B-3.	Mandatory provisions of and limitations on tender offers.	78B-8.	Criminal penalties.
78B-4.	Disclosure.	78B-9.	Service of process.
78B-5.	Deceptive practices.	78B-10.	Application of Chapter.
		78B-11.	Severability.

§ 78B-1. Title. — This Chapter shall be known and may be cited as the "Tender Offer Disclosure Act." (1977, c. 781, s. 1.)

§ 78B-2. Definitions. — As used in this Chapter, unless the context otherwise requires, the term:

- (1) "Administrator" means the Secretary of State.
- (2) "Affiliate" of a person means any person that, directly or indirectly, controls, is controlled by or is under common control with that person.
- (3) "Associate" of a person means
 - a. Any corporation or other organization of which such person is an officer, director or partner, or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities;
 - b. Any person who is an officer, director, partner or managing agent of such person, or who is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities of such person;
 - c. Any trust, guardianship, estate or similar entity in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity; or
 - d. Any relative or spouse of such person or any relative of such spouse, if in each case such relative or spouse has the same home as such person.
- (4) "Business day" means any day other than a Saturday, Sunday, or legal holiday in North Carolina.
- (5) "Equity security" means any stock, bond or other obligation, the holder of which presently has the right to vote for the election of directors or other persons who serve in a similar capacity for the issuer; and it includes any security convertible into an equity security and any right, option or warrant to purchase an equity security.
- (6) "Executive officer" means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions.
- (7) "Exempt offer" means, with respect to any class of equity securities of the subject company,
 - a. An offer made by the subject company or any issuer of equity securities to purchase its own equity securities or equity securities of its subsidiary;
 - b. Offers to purchase equity securities from not more than 25 offerees within a twelve-month period;
 - c. An offer, if the acquisition of any equity security pursuant to the offer, together with all other acquisitions by the offeror and his

associates of securities of the same class during the preceding 12 months, would not exceed two percent (2%) of the outstanding securities of such class;

- d. An offer to purchase equity securities of a class not registered pursuant to section 12 of the Securities Exchange Act of 1934;
 - e. An offer that is subject to approval by the shareholders of the subject company at a meeting for which proxies have been solicited pursuant to section 14 of the Securities Exchange Act of 1934; or
 - f. Bids made by a registered broker-dealer in the ordinary course of his business and not with the purpose of changing the control of an issuer of equity securities.
- (8) "Offeree" means any person to whom a tender offer is made.
- (9) "Offeror" means a person who makes a tender offer, and includes two or more persons,
- a. Whose tender offers are made jointly or in concert; or
 - b. Who intend to exercise jointly or in concert any voting rights attaching to the equity securities for which a tender offer is made.
- An "offeror" does not include any bank, insurance company, broker-dealer or other person loaning funds to an offeror in the ordinary course of its business or any broker-dealer, attorney, accountant, consultant, employee or other person furnishing information or advice to or performing administrative or ministerial duties for an offeror in the ordinary course of his business.
- (10) "Person" means an individual, a partnership, a corporation, an unincorporated association, a trust, an estate or similar entity.
- (11) "Securities Act of 1933" and "Securities Exchange Act of 1934" mean the federal statutes of those names as now or hereafter amended.
- (12) "Subject company" means a corporation or other issuer of securities whose equity securities are the subject of a tender offer and which
- a. Is organized under the laws of and doing business in this State; or
 - b. Has its principal place of business and substantial assets in this State.
- (13) "Subsidiary" of a person means a person more than fifty percent (50%) of whose outstanding securities representing the right, other than as effected by default, to vote for the election of directors, is owned by such person directly or indirectly.
- (14) "Tender offer" means an offer to purchase or invitation to tender, other than an exempt offer, made by an offeror, directly or indirectly, for such amount of any class of equity securities of a subject company that, together with equity securities of such class owned beneficially or of record by the offeror and his associates at the time of the offer or invitation, will in the aggregate exceed five percent (5%) of the outstanding equity securities of such class. A tender offer is "made" when the offer or invitation is first published or sent or given to the offerees. (1977, c. 781, s. 1.)

§ 78B-3. Mandatory provisions of and limitations on tender offers. — The following provisions apply to every tender offer:

- (1) Every tender offer shall provide that any equity securities of a subject company deposited or tendered pursuant to such tender offer may be withdrawn by or on behalf of any offeree at any time up to three business days before the termination of the effectiveness of the tender offer, and that any unpurchased equity securities may be so withdrawn at any time after 60 days from the date the tender offer is made. The period of effectiveness of any tender offer shall not be less than 21 days from the date the tender offer is made.

- (2) Where a tender offer is made for less than all the equity securities of a class and a greater amount of equity securities is deposited or tendered pursuant thereto than the offeror is bound or willing to accept, the securities shall be accepted by the offeror as nearly as practicable pro rata, disregarding fractions, according to the amount of equity securities deposited or tendered by each offeree.
- (3) Where an offeror revises the terms of a tender offer before the expiration thereof by increasing the consideration offered, the offeror shall pay the increased consideration to each offeree whose equity securities are purchased even if such securities were tendered and purchased before the revision of the terms of the tender offer. (1977, c. 781, s. 1.)

§ 78B-4. Disclosure. — (a) No offeror shall make a tender offer unless at least 80 days prior thereto he shall file with the Administrator and deliver to the principal office of the subject company personally or by registered United States mail a statement containing all the information required by subsection (b) of this section.

(b) The statement to be filed with the Administrator and delivered to the subject company pursuant to subsection (a) of this section shall contain the following information:

- (1) The name of the subject company and its registered agent and registered office; the title of the equity securities for which the proposed tender offer will be made; and all of the terms and conditions of the proposed tender offer;
- (2) With respect to the offeror filing the statement:
 - a. The name and residence or business address of the offeror;
 - b. If the offeror is an individual, his citizenship, his principal occupations or employments at the time of the filing and during the past five years, giving the starting and ending dates of each and the name, principal business and address of any corporation or other organization in which such occupation or employment is or has been conducted;
 - c. If the offeror is not an individual, its form of organization; the date of its organization; the jurisdiction in which it is organized and the name of its registered agent and registered office in that jurisdiction, if any; a description of the amount and characteristics of all of its equity securities that are authorized and that are outstanding; the amount, maturity date and interest rate of all of its outstanding long-term debt; and the name, address, citizenship and principal occupation or employment during the past five years of each director and executive officer of the offeror, and each person owning beneficially, directly or indirectly, to the knowledge of the offeror twenty percent (20%) or more of any class of outstanding equity securities of the offeror, giving the starting and ending dates of each and the name, principal business and address of any business, corporation or other organization in which each such occupation or employment was carried on; and if the tender offer is for the purchase of less than all the outstanding equity securities issued by the subject company and is made by an offeror which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, copies of a balance sheet of the offeror as of the end of its last fiscal year and of its income statements for the three fiscal years preceding the offer.
 - d. Whether or not, during the past five years, the offeror or any associate of the offeror has been convicted of, or has entered a plea

- of guilty or nolo contendere, in a criminal proceeding in any jurisdiction (excluding traffic violations or similar misdemeanors) and, if so, as to each proceeding the date of such conviction or plea, a description of the crime involved, the name and location of the court, and the penalty imposed or other disposition of the case; and
- e. Whether or not, during the past five years, the offeror or any associate of the offeror has been a party to a civil or criminal proceeding before a court or administrative or regulatory agency as a result of which the offeror or any associate of the offeror was or is subject to a judgment, decree or order enjoining future violations of, or prohibiting activities regulated by, federal or State securities or blue sky laws or finding liability under any such laws; and if so, a description of each such proceeding and the date and a summary of the terms of any such judgment, decree or order.
- (3) The source and amount of all the funds used or to be used in making the tender offer or purchasing equity securities pursuant thereto, and if any part of such funds is represented or is to be represented by funds borrowed for the purpose of making such offer or purchasing such securities a description of the transaction and the names of the parties thereto, except that where the source of funds is a loan or loans made in the ordinary course of business by a bank or other financial institution regularly engaged in the business of making loans, it will be sufficient to identify such bank or financial institution and so to state;
- (4) A statement of the purpose or purposes of the tender offer and of any plans existing at the time such tender offer is made which the offeror, upon successful completion of the proposed tender offer, may have which related to or would result in:
- a. Any major change in the business or corporate structure of the subject company or any of its subsidiaries, including without limitation any merger, consolidation, liquidation or sale of all or any substantial portion of its or their assets;
 - b. Any change in the board of directors or executive officers of the subject company, including without limitation any plans or proposals to change the number or terms of directors and the names, addresses, citizenship and principal occupation or employment of any proposed new members of the board of directors;
 - c. Any material change in the capitalization of the subject company or any of its subsidiaries;
 - d. The payment or nonpayment of dividends by the subject company; or
 - e. The delisting of any equity securities of the subject company from any organized securities exchange, or the termination of the registration of any equity securities of the subject company with the Securities and Exchange Commission;
- (5) The aggregate number of each class of equity securities of the subject company owned beneficially or of record, or subject to a right of acquisition, by each offeror and by each affiliate and associate of each offeror, giving the name and address of each such affiliate and associate, and any transactions in any such equity securities during the past 90 days by any such person;
- (6) Information as to any contracts, arrangements or understandings, whether in writing or otherwise, between the offeror or any associate or affiliate of the offeror and any person, including without limitation any offeree or the subject company or any director or executive officer thereof, with respect to the subject company or any equity securities thereof, including without limitation the transfer or retention of such

securities, joint ventures, option arrangements, puts or calls, loans, guaranties of loans, guaranties against loss or guaranties of profit, division of profits or losses, proxies, voting arrangement, or employment arrangements, naming the persons with whom such contracts, arrangements or understandings have been entered into, and giving the material details thereof; and

- (7) The identity of all persons employed, retained or to be compensated by the offeror, or by any person on his behalf, to make solicitations of or recommendations to equity security holders regarding the tender offer, and a brief description of the material terms of such employment, retainer or arrangement.

(c) There shall be delivered, as exhibits to the statement required by subsection (a) of this section, copies of the proposed tender offer and all advertisements and other written material relating thereto, including without limitation solicitations or recommendations to holders of equity securities of the subject company with respect to such tender offer.

(d) In the case of an offer that is registered under section 6 of the Securities Act of 1933, the offeror may, in lieu of the statement and exhibits required pursuant to subsections (a), (b) and (c) of this section, file with the Administrator and deliver to the principal officer of the subject company in the manner set forth in subsection (a) of this section a copy of the form of prospectus filed under the Securities Act of 1933 with respect to such offer. If such prospectus is filed with the Administrator pursuant to G.S. 78A-26, no additional copies shall be required to be filed with the Administrator pursuant to this subsection.

(e) If before the tender offer is made any material amendment is made to the statement furnished or exhibits delivered pursuant to subsections (b) and (c) of this section, the tender offer shall not be made earlier than 10 days after the date of such amendment.

(f) If at any time or from time to time after a tender offer is made, the offeror revises the terms of such offer, the offeror shall file with the Administrator and deliver to the principal office of the subject company personally or by registered United States mail a statement containing all of the terms and conditions of the revised tender offer and explaining in what respect the revised tender offer differs from the tender offer or offers previously made. Such statement shall be filed and delivered not less than six business days prior to the time such revised tender offer is made. All of the provisions of G.S. 78B-3 shall apply to such revised tender offer as if it were an original tender offer.

(g) A notice, in the form of a news release reasonably disseminated, advertisement, or other written communication directed to holders of equity securities of the subject company, which contains the following information shall be given concurrently with the filing required by subsection (a) of this section:

- (1) The fact that a tender offer is proposed to be made and that a statement pursuant to subsection (a) of this section has been filed with the Administrator and delivered to the subject company;
- (2) The amount of securities to be covered by the proposed tender offer and the date on which such offer is expected to be made;
- (3) The consideration proposed to be offered;
- (4) The identity of the offeror; and
- (5) The purpose of the offer.

Any such notice shall not be deemed to constitute a tender offer and shall contain a statement that the tender offer shall be made only by a communication complying with the provisions of this Chapter.

(h) Whenever the subject company mails or otherwise delivers any written communication to the offerees with respect to the tender offer, the offeror, or any affiliate or associate of the offeror, it shall at the same time file with the Administrator and deliver to the offeror personally or by registered United States mail copies of such written communications.

(i) The Administrator shall maintain in his office copies of all documents and other material filed pursuant to this section for a period of three years from the date of filing, and thereafter all such documents and other material may be destroyed as the Administrator deems appropriate. All documents and other material filed pursuant to this section shall be available for public inspection and copying. (1977, c. 781, s. 1.)

§ 78B-5. Deceptive practices. — It shall be unlawful for an offeror or subject company or any affiliate or associate of any offeror or the subject company or any person acting on its or their behalf to engage in any deceptive or manipulative acts or practices in connection with a tender offer. Deceptive and manipulative acts or practices include, without limitation, making any untrue statement of a material fact or omitting to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in connection with any tender offer. (1977, c. 781, s. 1.)

§ 78B-6. Civil liabilities. — (a) An offeror who

(1) Makes a tender offer that does not comply in all material respects with the provisions of G.S. 78B-3, or
(2) Makes a tender offer without complying in all material respects with the provisions of G.S. 78B-4, or
(3) Makes a tender offer by means of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading (the offeree not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and did not act in reckless disregard, of such untruth or omission, shall be liable to any offeree whose equity securities are sold to the offeror pursuant to the tender offer and such offeree in a civil action shall be entitled (i) to recover such equity securities, together with all dividends, interest or other payments received thereon upon the tender of the consideration received for such securities from the offeror, or (ii) if the offeror has transferred such equity securities to a third party, to recover such damages as the offeree shall have sustained as the proximate result of the conduct of the offeror which is in violation of this section.

(b) No civil action may be maintained under this section unless commenced before the expiration of two years after the act or transaction constituting the violation.

(c) The rights and remedies of this Chapter are in addition to any other rights or remedies that may exist at law or in equity. (1977, c. 781, s. 1.)

§ 78B-7. Injunctions. — (a) Whenever it appears to the Administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter, he may in his discretion bring an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with this Chapter or he may refer such evidence as is available concerning violations of this Chapter to the Attorney General, who may, with or without such a reference, bring such an action. A subject company and an offeror shall also have standing to bring an action in any court of competent jurisdiction to enjoin any person from any act or practice which constitutes a violation of this Chapter.

(b) Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order or may order rescission of any sales or purchases of equity securities determined to be unlawful under this Chapter, or award such other relief as it may deem just and proper, including directing the subject

company to refuse to transfer such securities on its books and to refuse to recognize any vote with respect to such securities. (1977; c. 781, s. 1.)

§ 78B-8. Criminal penalties. — (a) Any person who willfully violates this Chapter may be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than two years or both. Each of the acts specified herein shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution of conviction for any other offense. No indictment or information may be returned under this Chapter more than two years after the alleged violation.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter to the Attorney General or the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime under any other statute. (1977, c. 781, s. 1.)

§ 78B-9. Service of process. — (a) Any person, including any nonresident of this State, who engages in conduct that is subject to the provisions of this Chapter and who has not filed a consent to service of process under subsection (b) of this section, shall be deemed to have appointed the Administrator to be his attorney to receive service of any lawful process in any suit, action or proceeding against him or his successor, executor or Administrator which grows out of that conduct and which is brought under this Chapter, with the same force and validity as if served on him personally. Service may be had by leaving a copy of the process in the office of the Administrator, and it is not effective unless (i) the plaintiff forthwith sends notice of the service and a copy of the process by registered United States mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (ii) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

(b) Any person who engages in conduct that is subject to the provisions of this Chapter may appoint and maintain a registered agent, which agent may be either an individual resident of this State, or a domestic corporation, or a foreign corporation authorized to transact business in this State. Such appointment shall take place by filing in the office of the Secretary of State a statement setting forth the name and address of the person appointing, the registered agent and the name and address in this State of the registered agent. The registered agent appointed by any person pursuant to this section shall be an agent for said person upon whom any process, notice, or demand in any cause of action arising under this Chapter may be served.

(c) When process is served under subsection (a) of this section, the court shall order such continuance as may be necessary to afford the defendant reasonable opportunity to defend. (1977, c. 781, s. 1.)

§ 78B-10. Application of Chapter. — This Chapter shall not apply if the subject company is a public utility, public utility holding company, bank, bank holding company, insurance company, insurance holding company or savings and loan association subject to regulation by a federal or State agency and the tender offer is subject to approval by that agency. (1977, c. 781, s. 1.)

§ 78B-11. Severability. — If any provision or clause of this Chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable. (1977, c. 781, s. 1.)

§ 80-50. No brand or trademark shall be registered or renewed unless it is distinct from any other brand or trademark already registered or renewed. (1975, c. 281, § 1, 1977, c. 781, § 1.)

§ 80-51. Rules. The Commissioner of Agriculture shall promulgate rules and regulations for the administration of this chapter which shall include, but not be limited to, the following: (1975, c. 281, § 1, 1977, c. 781, § 1.)

§ 80-52. Fees for recording. — The Commissioner is authorized to collect a fee of twenty-five dollars for the recording of each new brand or trademark and a fee of ten dollars for the recording of each new trademark or service mark. (1975, c. 281, § 1, 1977, c. 781, § 1.)

§ 80-53. Fees for recording. — The Commissioner is authorized to collect a fee of twenty-five dollars for the recording of each new brand or trademark and a fee of ten dollars for the recording of each new trademark or service mark. (1975, c. 281, § 1, 1977, c. 781, § 1.)

§ 80-54. Recording of brands and trademarks. — The Commissioner shall maintain a record of all brands and trademarks recorded in this state. (1975, c. 281, § 1, 1977, c. 781, § 1.)

§ 80-55. Recording of brands and trademarks. — The Commissioner shall maintain a record of all brands and trademarks recorded in this state. (1975, c. 281, § 1, 1977, c. 781, § 1.)

Chapter 80.

Trademarks, Brands, etc.

Article 7.

Recording of Cattle Brands and
Marks with Commissioner
of Agriculture.

Sec.

80-46 to 80-56. [Repealed.]

Article 8.

Registration and Protection
of Livestock Brands.

80-57. Purpose.

80-58. Definitions.

Sec.

80-59. Responsibility and authority of
Commissioner of Agriculture;
application for registration; transfer
of ownership of brand.

80-60. No brands duplicated.

80-61. Rules and regulations.

80-62. Fees for recording.

80-63. Records to be kept of sales and slaughter.

80-64. Defacing of brands prohibited.

80-65. Rerecording.

80-66. Violation a misdemeanor.

ARTICLE 7.

*Recording of Cattle Brands and Marks with
Commissioner of Agriculture.*

§§ 80-46 to 80-56: Repealed by Session Laws 1975, c. 261, s. 1, effective January 1, 1976.

ARTICLE 8.

Registration and Protection of Livestock Brands.

§ 80-57. **Purpose.** — The purpose of this Article is to discourage livestock theft by allowing for the voluntary individual registration of brand marks for certain livestock. (1975, c. 261, s. 1.)

Editor's Note. — The act inserting this Article repealed Article 7, entitled "Recording of Cattle Brands and Marks with Commissioner of Agriculture." Where former provisions were similar to the new provisions, the historical citations to the repealed sections have been added to the new sections.

Session Laws 1975, c. 261, s. 2, provides: "This act shall become effective on January 1, 1976, except G.S. 80-61, which shall become effective upon ratification." The act was ratified May 12, 1975.

§ 80-58. **Definitions.** — (1) "Board". — The term "Board" means the North Carolina Board of Agriculture.

(2) "Brand". — The term "brand" means an identification mark permanently affixed into the hide of livestock by a hot iron or an extremely cold brand known as a "freeze brand."

(3) "Commissioner". — The term "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(4) "Livestock". — The term "livestock" means cattle, horses, ponies, mules, and asses.

(5) "Person". — The term "person" means an individual, firm, company, association, partnership or corporation. (1935, c. 232, s. 1; 1975, c. 261, s. 1.)

§ 80-59. Responsibility and authority of Commissioner of Agriculture; application for registration; transfer of ownership of brand. — The Commissioner shall record livestock brands and maintain a record of such brands pursuant to this Article. Such records shall be public and shall be prima facie evidence of ownership of livestock which is properly branded under this Article. The Commissioner shall authorize such agents within the North Carolina Department of Agriculture as he deems necessary to implement this Article.

Any person desiring the exclusive use of a brand shall make application to the Commissioner on forms prescribed by the Board. The transfer of ownership of a brand registration may be done only at the written request of the brand registrant of record. The Commissioner shall receive a fee of ten dollars (\$10.00) for recording such transfer. (1935, c. 232, ss. 3-5; 1975, c. 261, s. 1.)

§ 80-60. No brands duplicated. — No brand shall be registered that is a reasonable facsimile of another registered brand or that will likely be confused with another brand registered under this Article. (1975, c. 261, s. 1.)

§ 80-61. Rules and regulations. — The Board shall have authority to promulgate reasonable rules and regulations for implementation of this Article which shall include, but not be limited to, the location of and the size of brand marks. (1975, c. 261, s. 1.)

Editor's Note. — Session Laws 1975, c. 261, s. 2, provides: "This act shall become effective on January 1, 1976, except G.S. 80-61, which shall

become effective upon ratification." The act was ratified May 12, 1975.

§ 80-62. Fees for recording. — The Commissioner is authorized to collect a fee of twenty-five dollars (\$25.00) for the recording of each new brand, or for rerecording of each brand, and shall issue one certified copy of each brand recording to the holder of said brand. Duplicate certificates of registration may be issued by the Commissioner upon payment of a fee of two dollars (\$2.00). Revenues collected pursuant to this Article shall be deposited with the State Treasurer to the account of the North Carolina Department of Agriculture. (1935, c. 232, ss. 5, 6; 1975, c. 261, s. 1.)

§ 80-63. Records to be kept of sales and slaughter. — Persons or agents selling or bartering or exchanging branded livestock in the State of North Carolina shall provide the purchaser or new owner with a bill of sale showing a reasonable facsimile of the brand on any and all livestock having a brand as defined in this Article. Such bills of sale shall be prima facie evidence of transfer of ownership of branded livestock. Slaughter facilities in the State of North Carolina shall affix to their normal records of receipt of livestock a reasonable facsimile of the brand on any branded livestock received by them. Such records shall be maintained for at least 12 months. (1935, c. 232, ss. 8, 9; 1975, c. 261, s. 1.)

§ 80-64. Defacing of brands prohibited. — No person may change, conceal, deface, disfigure or obliterate any brand previously branded, impressed, or marked on any livestock, or put his or any other brand upon or over any part of any brand previously branded or marked upon any livestock, and no person shall make or use any counterfeit of any brand of any other person. (1935, c. 232, s. 10; 1975, c. 261, s. 1.)

§ 80-65. Rerecording. — Every brand recorded under this Article, in order to remain effective, must be rerecorded with the Commissioner during the tenth

year from its next previous recordation. Each person having a brand registered in the State of North Carolina shall be notified in writing by the Commissioner that said brand must be rerecorded to prohibit its disenrollment from the record of such brand maintained by the Commissioner. (1975, c. 261, s. 1.)

§ 80-66. Violation a misdemeanor. — Any person who violates any provision of this Article or any rule or regulation of the Board promulgated hereunder shall be guilty of a misdemeanor and upon conviction thereof fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than 60 days, or both fined and imprisoned, in the discretion of the court. (1935, c. 232, s. 11; 1975, c. 261, s. 1.)

Chapter 81.

Weights and Measures.

§§ 81-1 to 81-82: Recodified as §§ 81A-1 to 81A-88, effective July 1, 1976.

Editor's Note. — This Chapter was rewritten by Session Laws 1975, c. 544, effective July 1, 1976, and has been recodified as Chapter 81A.

Chapter 81A.

Weights and Measures Act of 1975.

Article 1.

Administration of Chapter.

Sec.

- 81A-1. Weights and measures program provided for.
- 81A-2. Administration of these Articles.
- 81A-3. Systems of weights and measures.
- 81A-4. Board of Agriculture authorized to establish standards of weights and measures for commodities having none.
- 81A-5. Employment of Director of Weights and Measures and authorized agents.
- 81A-6. Salaries and expenses.
- 81A-7. Local inspection of weights and measures.
- 81A-8. Standards of weights and measures.
- 81A-9. Definitions.
- 81A-10 to 81A-14. [Reserved.]

Article 2.

Powers and Duties of Commissioner.

- 81A-15. General duties.
- 81A-16. Police powers.
- 81A-17 to 81A-21. [Reserved.]

Article 3.

Violations.

- 81A-22. Misrepresentation of quantity.
- 81A-23. Misrepresentation of pricing.
- 81A-24. Commodities to be sold by weight, measure or numerical count.
- 81A-25. Unlawful for package to mislead purchaser.
- 81A-26. Sale from bulk.
- 81A-27. Information required on packages.
- 81A-28. Declarations of unit price on random packages.
- 81A-29. Offenses and penalties.
- 81A-30. Injunction.
- 81A-31. Presumptive evidence.
- 81A-32 to 81A-36. [Reserved.]

Article 4.

Uniform Weights and Measures.

- 81A-37. Standard weight packages of flour, meal, grits and hominy.
- 81A-38. Sale of cement blocks, cinder blocks and other concrete masonry units.
- 81A-39. Approval of heating units, etc., for curing tobacco.
- 81A-40. Sale of coal, coke and charcoal by weight.
- 81A-41. Establishment of standard loaves of bread; "loaf" defined.

Sec.

- 81A-42. Standard weights and measures.
- 81A-43. Standard rule for measurement of logs.
- 81A-44. Authority to prescribe standards of weight or measurement for sale of milk or milk products.
- 81A-45 to 81A-49. [Reserved.]

Article 5.

Public Weighmasters.

- 81A-50. Weighing livestock sold at public livestock market; weight certificates.
- 81A-51. Public weighmaster defined; to be licensed.
- 81A-52. Application for license permit.
- 81A-53. Forms of certificates of weight, etc., to be approved by Commissioner or authorized agent.
- 81A-54. Official seal of public weighmaster.
- 81A-55. Violations of provisions by weighmasters made misdemeanor.
- 81A-56. Requesting weighmaster to falsify weights; impersonation of weighmaster; alteration of certificate, etc.
- 81A-57. Certificate of weighmasters presumed accurate and correct.
- 81A-58. Duty of custodian of product during time intervening between weighing and issuance of certificate.
- 81A-59. Weighing tobacco in sales warehouses.
- 81A-60. Complaints to weighmaster or Commissioner of Agriculture.
- 81A-61. Approval of devices used.
- 81A-62. Annual license for public weighmaster.
- 81A-63. Seal declared property of State.
- 81A-64. Cotton weighing.
- 81A-65 to 81A-69. [Reserved.]

Article 6.

Scale Technician.

- 81A-70. Purpose of Article.
- 81A-71. Prerequisites for scale technician.
- 81A-72. Registration; certificate of registration; annual renewal.
- 81A-73. Service certificate.
- 81A-74. Bond.
- 81A-75. Scale removal.
- 81A-76. Control of condemned or rejected scale.
- 81A-77. Secondhand scale.
- 81A-78. Scale location.
- 81A-79. Exemption.
- 81A-80. Penalty.
- 81A-81 to 81A-85. [Reserved.]

Article 7.

General Provisions.

Sec.

81A-87. Severability provision.

81A-88. Repeal of conflicting laws.

Sec.

81A-86. Regulations to be unaffected by repeal of prior enabling statute.

Editor's Note. — This Chapter is Chapter 81 as rewritten by Session Laws 1975, c. 544, effective July 1, 1976, and recodified. Where

appropriate, historical citations to the sections of the former Chapter have been added to corresponding sections of the new Chapter.

ARTICLE 1.

Administration of Chapter.

§ 81A-1. **Weights and measures program provided for.** — In order to protect the purchasers or sellers of any commodity, and to provide uniform standards of weight and uniform standards of measure throughout the State, which must be in conformity with the standards of weight and the standards of measure established by Congress, the Commissioner is hereby authorized to establish and maintain a weights and measures program as is hereinafter provided. (1927, c. 261, s. 1; 1945, c. 280, s. 1; 1975, c. 544.)

§ 81A-2. **Administration of these Articles.** — The provisions of this Chapter shall be administered by the Commissioner or his authorized agent. For the purpose of administering and giving effect to the provisions of this Chapter, the provisions of Handbook 44 as adopted by the National Conference on Weights and Measures, are hereby adopted except insofar as modified or rejected by the North Carolina Board of Agriculture. The North Carolina Board of Agriculture is empowered to make such further rules and regulations as may be necessary to make effective the purposes and provisions of this Chapter. All fees or moneys received by the Commissioner pursuant to this Chapter shall be placed in the Department of Agriculture fund for the purpose of enforcing this Chapter. (1927, c. 261, s. 2; 1931, c. 150; 1943, c. 762, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-3. **Systems of weights and measures.** — The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the State. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in the State. (1975, c. 544.)

§ 81A-4. **Board of Agriculture authorized to establish standards of weights and measures for commodities having none.** — The Board of Agriculture is authorized and directed and empowered to establish standards of weights and measures for any commodity if no standard has been established by Congress or by the laws of the State of North Carolina; provided, however, that when a standard is established by Congress, or by the laws of the State of North

Carolina, such standard shall supersede the standard or standards established by the Board of Agriculture. (1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-5. Employment of Director of Weights and Measures and authorized agents. — The Commissioner may employ a Director of Weights and Measures and such other employees as may be necessary in carrying out the provisions of this Chapter and he may fix and regulate their duties. All authority vested in the Commissioner by virtue of the provisions of this Chapter may with like force and effect, be executed by such authorized agents of the Commissioner as defined in this Chapter. (1927, c. 261, ss. 3, 4; 1949, c. 984; 1975, c. 544.)

§ 81A-6. Salaries and expenses. — The Commissioner shall request sufficient funds for the proper administration of the duties prescribed in this Chapter. (1927, c. 261, s. 5; 1931, c. 150; 1949, c. 984; 1975, c. 544.)

§ 81A-7. Local inspection of weights and measures. — When any city or county appoints a local inspector of weights and measures, the appointment and regulation of his work must be pursuant to the rules and regulations of the Department of Agriculture and his work shall be subject to the supervision of the Commissioner or his authorized agent. (1927, c. 261, s. 6; 1949, c. 984; 1975, c. 544.)

§ 81A-8. Standards of weights and measures. — Weights and measures that are traceable to the U.S. Prototype Standards supplied by the United States, or approved as being satisfactory by the National Bureau of Standards, shall be the State primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Bureau of Standards. All secondary standards may be prescribed by the Commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the Commissioner or his authorized agent. Complete record of the standards belonging to the State shall be maintained by the Commissioner. (1927, c. 261, s. 9; 1943, c. 543; 1949, c. 984; 1975, c. 544.)

§ 81A-9. Definitions. — The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) Adjustment. — “Adjustment” is an act involving the tightening or loosening, or lengthening or shortening, or movement, of any part of a scale or weighing device, or the coordination of mechanical action of parts or electronic components with or upon each other, so as to make the scale or weighing device give correct indications of applied weight values within legal tolerance, and the correctness of indications shall be determined by test provided for under definition of the term “service” as defined in this Chapter.
- (2) Authorized Agent. — An “authorized agent” is any employee of the North Carolina Department of Agriculture designated by the Commissioner to enforce any provisions of this Chapter and who is designated by an official identification card issued by the Commissioner.
- (3) Barrel. — The term “barrel,” when used in connection with beer, ale, porter, and other similar fermented liquor is a unit of 31 liquid gallons; fractional parts of a barrel shall be understood to mean like fractional parts of 31 gallons.
- (4) Bulk Sale. — The term “bulk sale” is the sale of commodities when the quantity is determined at the time of sale.

- (5) Bushel. — The term "bushel" when used in connection with dry measure and standard containers is a unit of 2150.42 cubic inches, of which the dry quart and dry pint, respectively, are the one-thirty-second and one-sixty-fourth parts.
- (6) Commissioner of Agriculture. — "Commissioner" is the Commissioner of Agriculture of the State of North Carolina.
- (7) Condemned Equipment. — "Condemned equipment" is equipment that is permanently out of service.
- (8) Cord. — "Cord" when used in connection with purchases of wood is a quantity of wood consisting of any number of sticks, bolts or pieces laid parallel and together so as to form a rick or stack occupying a space four feet wide, four feet high and eight feet long, or such other dimensions that will when multiplied together equal 128 cubic feet by volume, construed as being seventy percent (70%) solid and thirty percent (30%) air space or 90 solid cubic feet.
- (9) Correct. — "Correct" is conformance to all applicable requirements of this Chapter.
- (10) Flour. — "Flour" is any finely ground product of wheat, or other grain, corn, peas, beans, seed or other substance, with or without added ingredients, intended for use as food for man.
- (11) Gallon. — "Gallon" when used in connection with liquid measure is a unit of 231 cubic inches, of which the liquid quart, liquid pint and gill are, respectively, the quarter, the one-eighth and the one-thirty-second parts.
- (12) Installation. — "Installation" is an act involving the erection, or building, or assembling of parts, or the placing or setting up of a scale or weighing device so as to give correct indications of applied weight values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under definition of the term "service" as defined in this Chapter.
- (13) Maintenance. — "Maintenance" is an act pursuant to the retention of a scale or weighing device in such working condition as to give correct applied weight value indications within legal tolerance when used as intended, which may involve either or both adjustment or repair before or after inaccuracy develops in fact, and the correctness of indications shall be determined by test provided for under the term "service" as defined in this Chapter.
- (14) Meal. — "Meal" is any product of grain, corn, peas, beans, seed or other substance coarsely ground, with or without added ingredients, either bolted, or unbolted, including grits and hominy, intended for use as food for man.
- (15) Package. — "Package" is any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.
- (16) Person. — "Person" is both plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, firms, societies, and associations.
- (17) Pound. — "Pound," used in connection with weight is the avoirdupois pound as declared by act of the United States Congress, except in those cases where it is common practice to use the "troy" pound or "apothecaries" pound, and the "ounce" is one-sixteenth part of an avoirdupois pound.
- (18) Primary Standards. — "Primary standards" are the physical standards of the State which serve as the legal reference from which all other standards, weights and measures are derived.
- (19) Rejected Equipment. — "Rejected equipment" is equipment that is incorrect, which is considered susceptible of proper repair.

- (20) **Repair.** — “Repair” is an act involving the replacement or mending of a broken or nonadjustable part or parts and the restoration of a scale or weighing device to such working condition as to give correct indications of applied weight values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under the term “service” as defined in this Chapter.
- (21) **Sale or Sell.** — “Sale” or “sell” is the ordinary meaning of said words and includes barter and exchange.
- (22) **Scale Technician.** — A “scale technician” is any person who, for hire or award, renders service involving adjustment, installation, repair, or maintenance of a scale or weighing device, either used or intended to be used in determining weight value, or values, by either physical act, instruction, or supervision.
- (23) **Secondary Standards.** — “Secondary standards” are the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.
- (24) **Service.** — “Service” is activity involving adjustment, installation, repair, or maintenance or a combination of two or more of these activities with respect to a scale or weighing device, and, in addition thereto, a test for determination of the accuracy of weight value indication in the following manner: Applying a series of loads of standard weight on a platter or platform up to capacity on a scale of 30 pounds capacity, and on all other scales except vehicle scales, standard weight loads equal to the first dial and/or unit weight on dial scales, and on beam scales and digital instruments a standard weight load equal to three-fourths scale capacity shall be applied. On vehicle scales up to and including 10 tons a minimum of 5,000 pounds of standard weight load and 5,000 pounds of build-up load equally distributed. On vehicle scales with a rated capacity in excess of 10 tons a standard weight load (build-up load if standard weights are not available) of not less than 20,000 pounds. If scale is so equipped all tare mechanisms shall be included in test.
- (25) **Ton.** — “Ton” is a unit of 2,000 pounds, avoirdupois weight.
- (26) **Weight.** — “Weight” when used in connection with any commodity is net weight; provided, however, where the label declares that the product is sold by drained weight, weight means net drained weight.
- (27) **Weight(s) and (or) Measure(s).** — “Weight(s) and (or) measure(s)” are all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices. (1927, c. 261, ss. 20, 21; 1941, c. 237, s. 2; 1945, c. 280, s. 1; 1947, c. 380; 1975, c. 544.)

§§ 81A-10 to 81A-14: Reserved for future codification purposes.

ARTICLE 2.

Powers and Duties of Commissioner.

§ 81A-15. **General duties.** — The Commissioner shall:

- (1) Have and keep general supervision of commercial weighing and measuring devices offered for sale, sold or used in the State.
- (2) Upon written request from any person or educational institution in the State test or cause to be tested, or calibrate, weights, measures and weighing and measuring devices used as standards in the State.

- (3) Enforce all the provisions of this Chapter.
- (4) Conduct investigations to insure compliance with this Chapter.
- (5) Inspect and test weights and measures kept, offered, or exposed for sale.
- (6) Inspect, and test to ascertain if they are correct, weights and measures commercially used (i) in determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count or (ii) in computing the basic charge or payment for services rendered on the basis of weight, measure or count.
- (7) Approve for use, and may mark, such weights and measures and weighing and measuring devices as he finds to be correct, and shall reject and mark as rejected such weights and measures as he finds incorrect. Weights and measures and weighing and measuring devices that have been rejected may be seized if not corrected within 10 days, or if used or disposed of in a manner not specifically authorized. Weights and measures found to be incorrect that are not capable of being made correct shall be condemned and may be seized by the Commissioner without any court order or other legal process.
- (8) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this Chapter or regulations promulgated pursuant thereto. In carrying out the provisions of this section, recognized sampling procedures, such as are designated in National Bureau of Standards Handbook 67, "Checking Prepackaged Commodities," shall be used.
- (9) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce.
- (10) Delegate to authorized agents any of these responsibilities for the proper administration of this Chapter. (1927, c. 261, s. 10; 1949, c. 984; 1975, c. 544.)

§ 81A-16. Police powers. — When necessary for the enforcement of this Chapter or regulations promulgated pursuant thereto the Commissioner or his authorized agent is:

- (1) Authorized to enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained.
- (2) Empowered to issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale.
- (3) Empowered to seize, for use as evidence, without warrant or other legal writ, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this Chapter or regulations promulgated pursuant thereto.
- (4) Empowered to stop any commercial vehicle wherever found in the State and, after presentment of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him to proceed with the vehicle to some specified place for inspection.

- (5) Authorized to arrest, without warrant, any violator of this Chapter. Such authorized agent shall proceed forthwith with such person before a magistrate or other person authorized to issue arrest warrants. (1927, c. 261, ss. 11-13; 1975, c. 544.)

§§ 81A-17 to 81A-21: Reserved for future codification purposes.

ARTICLE 3.

Violations.

§ 81A-22. Misrepresentation of quantity. — No person shall sell, offer or expose for sale less than the quantity he represents. No buyer shall take more than the quantity he represents when he furnishes the weight or measure by means of which the quantity of any commodity, thing or service is determined. (1927, c. 261, s. 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-23. Misrepresentation of pricing. — No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person. (1975, c. 544.)

§ 81A-24. Commodities to be sold by weight, measure or numerical count. — It shall be unlawful to sell, except for immediate consumption by the purchaser, on the premises of the seller, liquid commodities in any other manner than by weight or liquid measure, or commodities not liquid in any other manner than by measure of time, by length, by volume, by weight or by numerical count. When a commodity is sold by numerical count in excess of one unit, the units which constitute said numerical count shall be uniform in size and/or weight, and be so exposed as to be readily observed by the purchaser. (1945, c. 280, s. 1; 1949, c. 973; 1975, c. 544.)

§ 81A-25. Unlawful for package to mislead purchaser. — It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity in package form when said package is so made, or formed, or filled, or wrapped, or exposed, or marked, or labeled as to mislead or deceive the purchaser as to the quantity of its contents. (1945, c. 280, s. 1; 1975, c. 544.)

§ 81A-26. Sale from bulk. — Whenever the quantity is determined by the seller, bulk sales in excess of twenty dollars (\$20.00) and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

- (1) The name and address of the vendor and purchaser,
- (2) The date delivered,
- (3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity,
- (4) The identity of the most descriptive terms commercially practicable, including any quality representation made in connection with the sale, and
- (5) The count of individually wrapped packages, if more than one. (1975, c. 544.)

§ 81A-27. Information required on packages. — Except as otherwise provided in this Chapter or by regulations promulgated pursuant thereto, any

package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container,
- (2) The quantity of contents in terms of weight, measure, or count, and
- (3) The name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed. (1927, c. 261, s. 16; 1945, c. 280, s. 1; 1975, c. 544.)

§ 81A-28. Declarations of unit price on random packages. — In addition to the declarations required by G.S. 81A-27, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight at the time it is offered for retail sale. (1975, c. 544.)

§ 81A-29. Offenses and penalties. — Any person who violates any provision of this section or any provision of this Chapter or regulations promulgated pursuant thereto for which a specific penalty has not been prescribed shall be guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00), or by imprisonment for not more than three months, or both. Upon a subsequent conviction thereof, said person shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000) or by imprisonment for up to one year, or both. No person shall:

- (1) Use or have in possession for use in commerce any incorrect weight or measure.
- (2) Remove any tag, seal, or mark from any weight or measure without specific written authorization from the Commissioner or his authorized agent.
- (3) Hinder or obstruct any weights-and-measures official in the performance of his duties.
- (4) Impersonate in any way any employee of the North Carolina Department of Agriculture designated by the Commissioner to enforce any part of this Chapter.
- (5) Use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned so that its indications may be accurately read and the weighing or measuring operation observed from some position which may be reasonably assumed by a customer. (1927, c. 261, ss. 14, 15, 19; 1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-30. Injunction. — The Commissioner or his authorized agent is authorized to apply to any court of competent jurisdiction for a temporary restraining order or a preliminary or permanent injunction restraining any person from violating any provision of this Chapter. (1975, c. 544.)

§ 81A-31. Presumptive evidence. — Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place. (1975, c. 544.)

§§ 81A-32 to 81A-36: Reserved for future codification purposes.

ARTICLE 4.

Uniform Weights and Measures.

§ 81A-37. Standard weight packages of flour, meal, grits and hominy. — All flour and meal packed for sale, offered or exposed for sale, or sold in this State shall be one of the following standard weight packages and no other, namely: five pounds, 10 pounds, 25 pounds, 50 pounds, 100 pounds, and multiples of 100 pounds; provided, however, nonstandard-weight packages may be packed for sale, offered or exposed for sale, or sold in this State, weighing three pounds or less, if said nonstandard-weight packages shall be plainly and conspicuously marked showing net contents in avoirdupois weight; provided further that nothing in this section shall be construed to prevent the retail sale of any amount of flour or meal direct to the consumer from bulk, upon order and weight at time of delivery to the consumer. (1945, c. 280, s. 1; 1949, c. 984; 1975, c. 544.)

§ 81A-38. Sale of cement blocks, cinder blocks and other concrete masonry units. — In order to protect the purchasers of concrete block, cinder block, and other concrete masonry units and to provide for a minimum load-bearing strength, all concrete block, cinder block, and other concrete masonry units offered for sale or sold in this State shall have a load-bearing strength of not less than 700 pounds per square inch of gross bearing area, or the minimum load-bearing strength approved by the National Underwriters Laboratory or by the American Society of Testing Materials, whichever is less. The manufacturer shall furnish proof, acceptable to the Board of Agriculture, that the concrete block, cinder block, or other concrete masonry units being offered for sale or sold comply with the minimum load-bearing strength required by this section. Each sale shall be accompanied with a bill of sale or invoice on which shall be printed or stamped in ink or other indelible substance a statement guaranteeing that the products covered by said bill of sale or invoice meet the minimum load-bearing strength as required by this section signed by a duly authorized official or agent of the manufacturer; provided, however, that the provisions of this section shall not prohibit the sale or offer for sale of cement block, cinder block, or other concrete masonry units, known as "seconds" or "rejects," due to size, shape or less than minimum load-bearing requirement, if and when said sale is accompanied with a bill of sale or invoice on which is printed or stamped in ink or other indelible substance in bold letters a statement that the cement block, cinder block, or other concrete masonry units so billed or invoiced are inferior in quality and do not comply with minimum load-bearing requirement signed by a duly authorized official or agent of the manufacturer. (1947, c. 788; 1975, c. 544.)

§ 81A-39. Approval of heating units, etc., for curing tobacco. — All heating units and/or curing assemblies offered for sale or sold in this State intended for use in curing the so-called flue-cured tobacco shall bear a label or seal of approval, authorized by the Board of Agriculture, and be accompanied with a statement, including drawings and instructions, signed by the manufacturer thereof, specifying how said heating unit shall be installed, operated, and/or used, so as to reduce to a minimum the fire hazard involved.

In order to obtain from the Board of Agriculture a label or seal of approval herein referred to, the manufacturer of the heating unit and/or curing assembly, hereinafter referred to as a "curer," shall first, and at his own expense, submit, set up and demonstrate a representative curer, so as to prove to the Commissioner or his authorized agent that said curer will, when installed and operated in accordance with drawings and instructions furnished by said manufacturer, in accordance with the rules and regulations adopted by the

Board of Agriculture, reduce to a minimum the fire hazard involved; and second, shall obtain from the Department of Agriculture the label or seal of approval to be known as the "approval tag" and attach same to each curer which he (the manufacturer) offers for sale, sells, or installs either by himself or through his agent.

The Board of Agriculture is hereby authorized and empowered to make such rules and regulations as may be necessary to make effective the provisions of this section, and to make a charge for the approval tag not in excess of fifty cents (50¢) per curer. The said charge shall include the cost of issuing the tag of approval, and the cost of ascertaining by on-the-farm inspection whether or not the curers are being installed in accordance with the manufacturer's drawings and instructions, and/or the rules and regulations as adopted by the Board of Agriculture. In making and formulating its rules and regulations, the Board of Agriculture will observe certain standards, such as the nature, type and technical construction of a tobacco curer referred to in this section, the type of fuel to be used, distance of flame from combustible materials, safety cut-off valves, method of installation, thermal or heating problems, inspection of curers, both before and after use, and any and all changes and standards that should be promulgated and made to reduce fire hazards and lower insurance costs and to protect the tobacco crops of farmers. The enumeration of certain standards as herein given shall not limit the authority of the Board of Agriculture to make rules and regulations involving other standards suggested by scientific information as the same relates to curers and related problems. (1947, c. 787; 1953, c. 727; 1975, c. 544.)

§ 81A-40. Sale of coal, coke and charcoal by weight. — (a) All coal, coke, or charcoal sold in this State shall be sold by weight only. The standard unit of weight shall be the avoirdupois pound, and a ton shall be 2,000 pounds.

(b) All coal, coke, or charcoal sold or offered for sale in this State, or which is being transported on any public street or highway in North Carolina, shall be weighed on scales suitable for such weighing which have been tested and sealed by the Commissioner or his authorized agent. It shall not be unlawful to transport such coal, coke, or charcoal to the nearest such scale for the purpose of having same weighed, but no sale or delivery of same shall take place until the load shall have been weighed.

(c) Each sale or delivery of coal, coke, or charcoal to the consumer shall be accompanied by a weight certificate on which shall be expressed in ink or other indelible substance the name and address of the seller or dealer, name and address of the purchaser or receiver, the kind and size of coal being delivered and the gross tare and net weights, the date of weighing, the signature of the weighmaster, a place for signature of receiver, the name of deliveryman, and the license number of delivery vehicle. The weight certificate shall be made with an original and two carbon copies, with one copy going to the purchaser or receiver, one copy to be held by the deliveryman, and the third copy to be held by the weighmaster; provided, however, that when coal, coke or charcoal is delivered in this State in railway carload lots, the railway bill of lading may be used in lieu of the weight certificate required by this section. (1949, c. 860; 1975, c. 544.)

§ 81A-41. Establishment of standard loaves of bread; "loaf" defined. — When loaves of bread are offered for sale or sold in this State, each loaf shall be one of the following weights and lengths and no other, to wit: one pound, 11 ½ inches maximum length, five inches maximum width at bottom; one and one-half pounds, 13 ½ inches maximum length, five inches maximum width at bottom; two pounds, 15 inches maximum length, five inches maximum width at bottom; two and one-half pounds, 16 ½ inches maximum length, five inches maximum width at bottom. The term "loaf" as used in this section shall be

construed to mean a loaf which is baked in a pan of rectangular shape, either with straight-up or flared side, either with or without cover, and shall be known hereafter as the standard loaf. (1949, c. 1005; 1957, c. 374; 1975, c. 544.)

§ 81A-42. Standard weights and measures. — Whenever any commodity named in this section shall be quoted or sold by the bushel, the bushel shall be the number of pounds stated in this section and whenever quoted or sold in subdivisions of the bushel, the number of pounds shall be the fractional part of the number of pounds as set forth herein for the bushel, and when sold by the barrel shall consist of the number of pounds constituting 3.281 bushels.

<i>Commodity</i>	<i>Lbs. per bu.</i>	<i>Commodity</i>	<i>Lbs. per bu.</i>
Alfalfa	60	Fish	100
Apples, dried	24	Flax seed	56
Apple seed	40	Grapes, with stems	48
Barley	48	Grapes, without stems	60
Beans, castor	46	Gooseberries	48
Beans, dry lima	60	Grass seed, Bermuda	14
Beans, green in-pod lima	30	Grass seed, blue	14
Beans, soy	60	Grass seed, Hungarian	48
Beef, net (per bbl.)	200	Grass seed, Johnson	25
Beets	50	Grass seed, Italian rye	20
Blackberries	48	Grass seed, orchard	14
Blackberries, dried	28	Grass seed, tall meadow and fes- cue	24
Bran	20	Grass seed, all meadow and fes- cue except tall	14
Broomcorn	44	Grass seed, perennial rye	14
Buckwheat	50	Grass seed, timothy	45
Cabbage	50	Grass, redtop	14
Canary seed	60	Grass seed, velvet	7
Carrots	50	Hair, plaster	8
Cement	80	Hemp seed	44
Charcoal	22	Hominy	62
Cherries, with stems	56	Horseradish	50
Cherries, without stems	64	Land plaster	100
Clover seed, red and white	60	Lime, unslaked	80
Clover, Burr	8	Lime, slaked	40
Clover, German	60	Meal, corn, whether bolted or un- bolted	48
Clover, Japan, Lespedeza	25	Melon, cantaloupe	50
Coal, stone	80	Millet	50
Coke	40	Mustard	58
Corn, shelled	56	Nuts, chestnuts	50
Corn, Kaffir	50	Nuts, hickory, without hulls	50
Corn, pop	70	Nuts, walnut, without hulls	50
Cotton seed	30		
Cotton seed, Sea Island	44		
Cucumbers	48		

<i>Commodity</i>	<i>Lbs. per bu.</i>	<i>Commodity</i>	<i>Lbs. per bu.</i>
Oats, seed	32	Potatoes, sweet green	56
Onions, button sets	32	Potatoes, sweet, dry weight	47
Onions, top buttons	28	Quinces, matured	48
Onions, matured	57	Raspberries	48
Osage orange seed	33	Rice, rough	44
Parsnips	50	Rye seed	56
Peaches, matured	50	Sage	4
Peaches, dried	25	Salads, mustard, spinach, turnips, and kale	10
Peach seed	50	Salt	50
Peanuts, Spanish	30	Sorghum molasses (per gal.)	12
Peanuts	22	Sorghum seed	50
Pears, matured	56	Strawberries	48
Pears, dried	26	Sunflower seed	24
Peas, dry field	60	Teosinte	59
Peas, green in hull field	30	Tomatoes	56
Pieplant	50	Turnips	50
Plums	64	Wheat	60
Pork net (per bbl.)	200		
Potatoes, Irish	56		

It shall be unlawful to purchase or sell, or barter or exchange, any article named in this section on any other basis than as stated herein; provided, however, that any such articles may be sold by weight. (Code, ss. 3849, 3850; 1885, c. 26; 1905, c. 126; Rev., s. 3066; 1909, c. 555, s. 1; c. 835; 1915, c. 230, s. 1; 1917, c. 34; Ex. Sess. 1921, c. 87; 1931, c. 76; 1933, c. 523, s. 3; 1937, c. 354; 1949, c. 984; 1975, c. 544.)

§ 81A-43. Standard rule for measurement of logs. — The standard rule for determining the number of board feet in a tree or log shall be the so-called "International ¼ inch Log Rule." None of the provisions of this section shall apply to contracts entered into prior to June 11, 1975, nor to the measure of damages in any action in tort. This section shall not prevent the buyer and the seller from agreeing that some other log rule shall be used to determine the number of board feet in trees or logs covered by the contract between them. (1947, c. 400, s. 1; 1975, c. 544.)

§ 81A-44. Authority to prescribe standards of weight or measurement for sale of milk or milk products. — The Board of Agriculture is hereby authorized and empowered to adopt and promulgate, after notice and hearing, rules and regulations prescribing standards or units of weight or measure by which milk, cream or other fluids containing milk or milk products may be sold at retail in bottles or other capped or sealed containers, and the sale thereof by any other standards or units of weight or measure shall be unlawful. (1949, c. 982; 1975, c. 544.)

§§ 81A-45 to 81A-49: Reserved for future codification purposes.

ARTICLE 5.

Public Weighmasters.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 81A-50. Weighing livestock sold at public livestock market; weight certificates. — Whenever livestock is offered or exposed for sale, or sold by weight at a public livestock market, the livestock shall be weighed by a public weighmaster and each individual sale shall be accompanied with a weight certificate in duplicate on which shall be expressed in ink or other indelible substance, the name and address of seller, the kind, number and weight of livestock being offered for sale, or sold, the time of day and date of weighing and the name of the weighmaster. The information expressed on said certificate shall be announced or otherwise made known immediately preceding the sale, if said sale be by auction. (1943, c. 762, s. 1; 1975, c. 544.)

§ 81A-51. Public weighmaster defined; to be licensed. — Any person, either for himself or as a servant or agent of any other person, firm, or corporation, or who is elected by popular vote, who shall weigh, or measure, or count, or who shall ascertain from, or record, the indications or readings of, a weighing, or measuring, or recording, device or apparatus for any other person, firm, or corporation, and declare the weight, or measure or count, or reading, or recording to be the true weight, or measure, or count, or reading, or recording of any commodity, thing, article, or product upon which the purchase, or sale, or exchange, is based, and make a charge for, or collect pay, a fee, or any other compensation for such act, shall issue a certificate of weight, or measure, or count, in accordance with the provisions of this Chapter, shall be licensed and shall be known as a public weighmaster in the State of North Carolina. (1939, c. 285, s. 1; 1945, c. 1067; 1971, c. 1085, s. 1; 1975, c. 544.)

§ 81A-52. Application for license permit. — Any person not less than 18 years of age desiring to be a public weighmaster in this State shall apply for and obtain a license from the North Carolina Department of Agriculture by filing formal application under oath as follows: "I,, a citizen of the United States, residing at, county of have familiarized myself with the law and with full knowledge of the provisions contained therein relative to licensing of public weighmaster, do hereby file application for license to be issued accordingly. I certify that I am of sound mind and am physically fit to perform the duties imposed upon a public weighmaster and that I will, if licensed, abide by and enforce all laws, rules and regulations relating to a public weighmaster to the best of my knowledge and ability." (1939, c. 285, s. 2; 1949, c. 983, s. 1; 1975, c. 544.)

§ 81A-53. Forms of certificates of weight, etc., to be approved by Commissioner or authorized agent. — It shall be the duty of every public weighmaster licensed under this act to issue a certificate of weight, measure, count, reading, or recording on forms approved by the Commissioner or his authorized agent, and to enforce the provisions of this Chapter, together with rules and regulations relating thereto. Said public weighmasters shall not receive compensation from the State for the duties performed. (1939, c. 285, s. 3; 1975, c. 544.)

§ 81A-54. Official seal of public weighmaster. — It shall be the duty of every public weighmaster so licensed under this Article to obtain from the North Carolina Department of Agriculture an official seal for the sum of five dollars (\$5.00), which seal shall have inscribed thereon the following words: "North Carolina Public Weighmaster" and such other design and/or legend as the Commissioner or his authorized agent may deem appropriate. The seal shall be stamped or impressed upon each and every weight, measure, count, reading or recording certificate issued by such public weighmaster, and when so applied the certificate shall be recognized and accepted as a declaration of the official, true, and accurate and undisputed weight, measure, count, reading or recording of the commodity, product, or article weighed, or measured, or counted within the tolerance allowed by this Chapter; provided, however, that the weighers of tobacco in leaf tobacco warehouses may use, in lieu of said seal, a signature, which signature shall also appear, in ink or other indelible substance on the weighmaster's formal application, and again, posted in a conspicuous and accessible place in the tobacco warehouse where he is acting as a weighmaster. All public weighmasters' seals shall remain the property of the State of North Carolina. (1939, c. 285, s. 4; 1941, c. 317, s. 1; 1975, c. 544.)

§ 81A-55. Violations of provisions by weighmasters made misdemeanor. — Any public weighmaster who shall refuse to issue a certificate as prescribed by this Article, or who shall issue a certificate giving a false weight, or measure, or count, or reading, or recording, or who shall misrepresent the weight, or measure, or count, or reading, or recording of the quantity of any commodity, product or article to any person, firm or corporation, or who shall otherwise violate any of the provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00), or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court, and, in addition thereto, his license shall be revoked and he shall forfeit his seal which, when so forfeited, shall be turned over to the Commissioner or his authorized agent. (1939, c. 285, s. 5; 1975, c. 544.)

§ 81A-56. Requesting weighmaster to falsify weights; impersonation of weighmaster; alteration of certificate, etc. — Any person, firm, or corporation who shall request a public weighmaster to weigh, measure, count, read, or record any commodity, product or article falsely or incorrectly, or who shall request a false or inaccurate certificate of weight, measure, count, reading, or recording, or any person issuing a certificate of weight, or measure, or count, or reading, or recording within the meaning of this Article, who is not a public weighmaster as provided for by this Article, or who shall act as, or for, or in any way impersonate, a public weighmaster, or who shall erase, change, or alter any certificate issued by a public weighmaster, or who shall make incorrect the certificate by increasing or decreasing the weight or measure or count of the commodity, product or article certified to for the purpose of deception, or who shall violate any provision of this Article for which a special penalty has not been provided, shall be guilty of misdemeanor and upon conviction thereof shall be

punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court. (1939, c. 285, s. 6; 1975, c. 544.)

§ 81A-57. Certificate of weighmasters presumed accurate and correct. — When a public weighmaster certificate is used in the sale, or purchase, or barter, or exchange of any commodity, product, or article, the certified weight, or measure, or count or reading or recording shall be deemed to be the true, accurate and undisputed weight, or measure or count, or reading or recording at time said commodity, product, or article is put into the natural channels of trade, which is, at the time of sale or purchase or barter or exchange; provided, however, that reasonable variations, or tolerances shall be permitted as established by rules and regulations as provided for by this Chapter. (1939, c. 285, s. 7; 1941, c. 317, s. 2; 1975, c. 544.)

§ 81A-58. Duty of custodian of product during time intervening between weighing and issuance of certificate. — If any commodity, product or article is to be offered for sale, or sold and is weighed or measured or counted by any public weighmaster and a certificate issued prior to sale, or acceptance of such commodity, product or article by the purchaser, his agent, or consignee, or if any commodity, product or article is offered for sale, sold, and/or delivered pending the weighing or measuring or counting of such commodity, product, or article by a public weighmaster and the issuance of a certificate, the person, firm, or corporation in whose custody said commodity, product or article is, shall keep, protect and prevent any increase or decrease in weight, measure or count, in the interim so that the declaration of weight, or measure, or count shall be true in accordance with G.S. 81A-57. The term "interim" as used in this section shall be construed to mean the time intervening between the weighing and issuance of certificate and the sale or purchase and the time intervening between the sale or purchase and the presentation of such commodity, product, or article to the public weighmaster for weighing or measuring or counting, and the issuance of certificate. Any loss sustained in the weight or measure or count of any commodity, product, or article while in custody shall be borne by the person, firm or corporation in whose custody said commodity, product, or article is. (1939, c. 285, s. 8; 1975, c. 544.)

§ 81A-59. Weighing tobacco in sales warehouses. — All leaf tobacco offered for sale in a leaf tobacco warehouse in this State shall be weighed by a public weighmaster, shall be accompanied by a public weighmaster certificate, and shall be and remain in custody of the warehouse operator from and after the time it is weighed by the public weighmaster until it is sold or the bid is rejected by the owner thereof. (1945, c. 1067; 1975, c. 544.)

§ 81A-60. Complaints to weighmaster or Commissioner of Agriculture. — When doubt or difference arises as to the correctness of the weight, or measure, or count, or reading, or recording of any amount or part of any commodity, product, or article for which a certificate of weight, measure, count, reading or recording, has been issued by a public weighmaster, the owner, agent or consignee shall make complaint before moving said commodity, product, or article from city, town or community where weight certificate was issued, to the public weighmaster issuing said certificate or to the Commissioner or his authorized agent setting forth the cause or causes for such doubt and/or difference, and have said amount, or part of the amount, or any commodity, product, or article reweighed, or remeasured, or recounted by the weighmaster issuing the certificate or by an authorized agent of the Commissioner; provided,

the commodity, product or article is kept and protected as is required during the interim period provided for in G.S. 81A-58. If, on reweighing, remeasuring, or recounting, a difference in original weight, or measure or count, is sustained the difference thus sustained shall be that, and that only, which is in excess of tolerance allowed by this Chapter, and any desired adjustment as a result of such difference shall be made accordingly, and the cost of reweighing or remeasuring or recounting shall be borne by the public weighmaster responsible for the issuance of such faulty certificate; otherwise, the cost shall be borne by the complainant. (1939, c. 285, s. 9; 1941, c. 317, s. 3; 1975, c. 544.)

§ 81A-61. Approval of devices used. — It shall be unlawful for any public weighmaster to use any weights or measures, or weighing or measuring or reading or recording device, which has not been tested and approved by the Commissioner or his authorized agent in accordance with the provisions of this Chapter and the rules and regulations governing same. (1939, c. 285, s. 10; 1975, c. 544.)

§ 81A-62. Annual license for public weighmaster. — Public weighmasters shall be licensed for a period of one year beginning on the first day of July and ending on the thirtieth day of June, next, and a fee of ten dollars (\$10.00) shall be paid for each person so licensed to the Department of Agriculture at time of filing application, as set forth in G.S. 81A-52. (1939, c. 285, s. 11; 1943, c. 543; 1975, c. 544.)

§ 81A-63. Seal declared property of State. — The seal herein provided for shall be the property of the State of North Carolina and shall be forfeited and returned to the Commissioner or his authorized agent upon termination of the performance of duties herein described as being the duties of a public weighmaster. Failure or refusal of a person licensed as a public weighmaster under this Article to return, turn over, or surrender the official seal furnished by the Department of Agriculture upon expiration of term of license or for malfeasance in office shall be a misdemeanor and any person convicted thereof shall forfeit the amount paid for use of such seal and shall be punished by a fine of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00), or by imprisonment for not more than three months, or both such fine and imprisonment, in the discretion of the court. (1939, c. 285, s. 14; 1975, c. 544.)

§ 81A-64. Cotton weighing. — If any weigher or purchaser of cotton shall make any deduction from the weight of any bag, bale, or package of lint cotton, for or on account of the draft, turn, or break of the scales, steelyards, or other implement used in weighing the same, or for any other cause except as herein allowed, the person so offending shall be guilty of a misdemeanor, and fined not more than three hundred dollars (\$300.00) or imprisoned, in the discretion of the court; provided, however, that deductions may be made by the weigher for water, dirt, or other foreign substances on such bag, bale, or package of cotton, or for other just cause, but if such deductions are made, the nature of such deductions shall be indicated upon the principal weight ticket which shall also show the gross weight of the cotton, the amount deducted as tare, and the net weight of said cotton. (1874-5, c. 58, ss. 1, 3; Code, s. 1007; Rev., s. 3816; C. S., s. 5085; 1943, c. 762, s. 2; 1975, c. 544.)

§§ 81A-65 to 81A-69: Reserved for future codification purposes.

ARTICLE 6.

Scale Technician.

§ 81A-70. **Purpose of Article.** — The purpose of this Article shall be to protect the owners and users of scales and weighing devices in their needs for scale repair and service, to provide for scale technician registration, and to provide for financial underwriting of services rendered. (1941, c. 237, s. 1; 1947, c. 380; 1975, c. 544.)

§ 81A-71. **Prerequisites for scale technician.** — It shall be unlawful for any scale technician to render service as a scale technician until after he or she has complied with the following requirements:

- (1) Obtained from the Department of Agriculture a copy of this Article, a copy of regulations pertinent to said Article, and an application form for registration.
- (2) Obtained bond in the sum of one thousand dollars (\$1,000) issued by a surety company licensed to do business in North Carolina.
- (3) Filed bond with the clerk of superior court of the county in which such applicant resides, unless he or she be a resident of some other state, in which event such bond shall be filed with the Clerk of Superior Court in Wake County, North Carolina.
- (4) Obtained a receipt in duplicate for such bond and filed the receipt with the clerk of superior court and mailed or delivered one copy of such receipt together with the application form for registration, completely filled out, to the Department of Agriculture, Raleigh, North Carolina.
- (5) Obtained a registration card or certificate from the Commissioner or his authorized agent and a model form of service certificate.

The provisions of this Article shall not apply to a full-time employee who renders service only on a scale or weighing device, or on scales or weighing devices, owned solely by his or her employer unless additional pay or compensation is received for such service. (1941, c. 237, s. 3; 1947, c. 380; 1975, c. 544.)

§ 81A-72. **Registration; certificate of registration; annual renewal.** — The Commissioner or his authorized agent shall register any person who has complied with the requirements of this Article by making a record of receipt of application and of bond, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale technician and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1 next and shall be renewed on the first day of July of each year thereafter. (1941, c. 237, ss. 4, 5; 1943, c. 543; 1947, c. 380; 1975, c. 544.)

§ 81A-73. **Service certificate.** — Whenever any service is rendered on any scale or weighing device used or intended to be used in this State by a scale technician, a certificate shall be issued by such scale technician who rendered said service, which shall be known as a "service certificate." The size and form of said service certificate shall be determined by the Commissioner or his authorized agent. Inclusive of other pertinent information or statements, the said certificate shall bear a statement expressed in ink or other indelible substance naming the kind of service rendered, whether adjustment, installation, repair, or maintenance, and stating that a service test as defined under the term "service" has been made, and that the service rendered is guaranteed to be as represented. The service certificate shall be made out in triplicate, with original going to the owner of such scale or weighing device or

his agent, and a duplicate shall be sent to the Commissioner or his authorized agent if service is upon a scale or weighing device which has been rejected or condemned by an authorized agent, and the triplicate copy shall be retained by the scale technician issuing such certificate. (1947, c. 380; 1975, c. 544.)

§ 81A-74. Bond. — The bond required by this Article shall underwrite the guarantee of a refund or compensation, covering any claim by owner of scale or weighing device for damage or injury, which claim is sustained by the court, resulting in misrepresentation of service rendered, or failure to comply with all the provisions of this Article, by the scale technician, regardless of his or her intent; provided, however, that the aggregate liability of the surety to all claimants sustained by the court shall in no event exceed the amount of said bond. (1947, c. 380; 1975, c. 544.)

§ 81A-75. Scale removal. — When a scale or weighing device is removed from the premises where located by a scale technician, the scale technician or his servant or agent shall issue a receipt for said scale or weighing device, on which shall be written in ink or other indelible substance the name and address of the owner, the name and address of receiving agent, date of receipt, anticipated date of return, name or make of scale, and such other information pertinent to its identification. The form of receipt shall be approved by the Commissioner or his authorized agent. (1947, c. 380; 1975, c. 544.)

§ 81A-76. Control of condemned or rejected scale. — It shall be unlawful for any owner of a scale or weighing device which has been condemned or rejected by the Commissioner or his authorized agent to either use or dispose of same in any manner other than at the direction of the Commissioner or his authorized agent; provided, however, said rejected scale or weighing device may be removed from the premises temporarily for repairs or service only. (1947, c. 380; 1975, c. 544.)

§ 81A-77. Secondhand scale. — It shall be unlawful for any person to sell, or offer for sale, or put into use, a secondhand or rebuilt or reconditioned scale or weighing device unless said scale shall have been tested and approved by the Commissioner or his authorized agent, or shall be accompanied by a service certificate as provided for in this Article. Said service certificate shall be retained by the purchaser or user of said scale until an inspector of weights and measures has tested and approved such secondhand scale. The said certificate shall serve as proof of the accuracy of scale at the time scale was purchased or put into service. A secondhand or rebuilt or reconditioned scale or weighing device as referred to in this section shall be considered as being a scale or weighing device in the channels of trade which does not belong to the previous user. (1947, c. 380; 1975, c. 544.)

§ 81A-78. Scale location. — It shall be unlawful for any scale or weighing device to be installed, set up, put into service, or used on a foundation or support that aids in giving false indication of weight values applied to platter, platform, or other load receiving element. (1947, c. 380; 1975, c. 544.)

§ 81A-79. Exemption. — The provisions of this Article shall not prohibit the user of a scale or weighing device from employing some person other than a scale technician to render service as defined by this Article upon his or her scale or weighing device, nor apply to the person so employed, who does not solicit such employment, provided that said user shall not be relieved of his or her responsibility or liability concerning the accuracy of the scale or weighing device after service has been rendered. (1947, c. 380; 1975, c. 544.)

§ 81A-80. Penalty. — Any person who violates any of the provisions of this Article, or who for hire or award renders service as a scale technician on a scale or weighing device without registering as a scale technician or who shall fail to issue a service certificate or who shall issue a service certificate bearing false statements regarding service rendered, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than three months, or both fined and imprisoned. Upon conviction of violating this Article, a scale technician shall forfeit any charges or remuneration for service rendered, if service be involved. The scale technician and his bonding company shall, at the discretion of the court, reimburse or compensate the owner of the scale or weighing device in question for such damage, or injury, sustained. Upon a subsequent conviction of violation of this Article, the court in its discretion, may deny a scale technician the privilege to act as or in the capacity of a scale technician for a specified length of time. His registration card or certificate may be seized by the court and turned over to the Commissioner or his authorized agent with instruction concerning reinstatement or renewal. (1941, c. 237, s. 7; 1947, c. 380; 1949, c. 983, s. 2; 1975, c. 544.)

§§ 81A-81 to 81A-85: Reserved for future codification purposes.

ARTICLE 7.

General Provisions.

§ 81A-86. Regulations to be unaffected by repeal of prior enabling statute. — The adoption of this Chapter or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this Chapter or modified or revoked. (1975, c. 544.)

§ 81A-87. Severability provision. — If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. (1975, c. 544.)

§ 81A-88. Repeal of conflicting laws. — All laws and parts of laws contrary to or inconsistent with the provisions of this Chapter are repealed except as to offenses committed, liabilities incurred, and claims made thereunder prior to July 1, 1976. (1975, c. 544.)

Chapter 83.

Architects.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 83-4. Organization of Board; officers; treasurer's bond.

Applied in *Barrett v. Craven County Bd. of Educ.*, 70 F.R.D. 466 (E.D.N.C. 1976).

§ 83-9. Refusal, revocation, or suspension of certificates.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 83-10. Examination fees; expenses of Board.

Reimbursement of Expenses of Members. — Provisions of section which provide that all expenses incurred by members of the Board shall be reimbursed have been repealed and

superseded by Session Laws 1975, c. 765 amendment to G.S. 93B-5(b). Opinion of Attorney General to Mr. R. Mayne Albright, 45 N.C.A.G. 43 (1975).

§ 83-12. Practice without certificate unlawful.

Cited in *State v. Camp*, 286 N.C. 148, 209 S.E.2d 754 (1974).

Chapter 84.

Attorneys-at-Law.

Article 1.

Qualifications of Attorney; Unauthorized Practice of Law.

Sec.

84-4.1. Limited practice of out-of-state attorneys.

84-5.1. Rendering of indigent legal services by nonprofit corporations.

Article 4.

North Carolina State Bar.

84-17. Government.

84-23. Powers of council.

Sec.

84-23.1. Prepaid legal services.

84-24. Admission to practice.

84-28. Discipline and disbarment.

84-28.1. Disciplinary hearing commission.

84-28.2. Persons immune from suit.

84-29. Evidence and witnesses.

84-30. Rights of accused person.

84-31. Counsel; investigators; powers; compensation.

84-32. Records and judgments and their effect; restoration of licenses.

84-34. Membership fees and list of members.

84-36.1. Clerks of court to certify orders.

ARTICLE 1.

Qualifications of Attorney; Unauthorized Practice of Law.

§ 84-2. Persons disqualified.

Cited in *State v. Hunter*, 290 N.C. 556, 227 S.E.2d 535 (1976).

§ 84-4.1. **Limited practice of out-of-state attorneys.** — Any attorney regularly admitted to practice in the courts of record of another state and in good standing therein, having been retained as attorney for any party to a legal proceeding, civil or criminal, pending in the General Court of Justice of North Carolina, or the North Carolina Utilities Commission or the North Carolina Industrial Commission may, on motion, be admitted to practice in the General Court of Justice or North Carolina Utilities Commission or the North Carolina Industrial Commission for the sole purpose of appearing for his client in said litigation, but only upon compliance with the following conditions precedent:

(3) He shall attach to his motion a statement that unless permitted to withdraw sooner by order of the court, he will continue to represent his client in such proceeding until the final determination thereof, and that with reference to all matters incident to such proceeding, he agrees that he shall be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if he were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(5) He shall attach to his motion a statement to the effect that he has associated and has personally appearing with him in such proceeding an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with such legal proceedings, or any disciplinary matter, with the same effect as if personally made on such foreign attorney within this State.

(1975, c. 582, ss. 1, 2; 1977, c. 430.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "action" for "actions" and inserted "and the North Carolina State Bar" near the end of subdivision (3) and inserted "or any disciplinary matter" near the end of subdivision (5).

The 1977 amendment inserted "or the North Carolina Industrial Commission" in two places in the introductory paragraph.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (3) and (5) are set out.

An out-of-state attorney has no absolute right to practice law in another forum. It is permissive and subject to the sound discretion of the court. *State v. Hunter*, 290 N.C. 556, 227 S.E.2d 535 (1976), cert. denied, U.S. , 97 S. Ct. 1106, 51 L. Ed. 2d 539 (1977).

Prohibition of Habitual Practice in Courts of State by Nonresident Counsel. — This section forbids the courts from allowing nonresident counsel, when citizens of other states and not holding license from this court, from practicing habitually in our courts, and they cannot acquire the right to do so. *State v. Hunter*, 290 N.C. 556, 227 S.E.2d 535 (1976), cert. denied, U.S. , 97 S. Ct. 1106, 51 L. Ed. 2d 539 (1977).

§ 84-5.1. Rendering of indigent legal services by nonprofit corporations. — Subject to the rules and regulations of the North Carolina State Bar, as approved by the Supreme Court of North Carolina, a nonprofit corporation, organized under Chapter 55A of the General Statutes of North Carolina for the sole purpose of rendering indigent legal services, may render such services through attorneys duly licensed to practice law in North Carolina. (1977, c. 841, s. 1.)

ARTICLE 2.*Relation to Client.***§ 84-11. Authority filed or produced if requested.**

Cited in *Byrd v. Trustees of Watts Hosp.*, 29 N.C. App. 564, 225 S.E.2d 329 (1976).

ARTICLE 3.*Arguments.***§ 84-14. Court's control of argument.****Discretion of Court. —**

Argument of counsel must be left largely to the control and discretion of the presiding judge. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975); *State v. Cousins*, 289 N.C. 540, 223 S.E.2d 338 (1976).

Control of the arguments of counsel to the jury must be left largely in the sound discretion of the trial judge. *State v. McCall*, 289 N.C. 512, 223 S.E.2d 303 (1976).

Arguments of counsel are largely in the control and discretion of the trial judge who must allow wide latitude in the argument of the law, the facts of the case, as well as to all reasonable inferences to be drawn from the

facts. *State v. Taylor*, 289 N.C. 223, 221 S.E.2d 359 (1976).

What constitutes an abuse of the privilege of argument to the jury must ordinarily be left to the sound discretion of the trial judge. *State v. Alford*, 289 N.C. 372, 222 S.E.2d 222 (1976).

The conduct of the arguments of counsel is left to the sound discretion of the trial judge. *State v. Britt*, 291 N.C. 528, 231 S.E.2d 644 (1977).

The control of the argument of the solicitor and counsel must be left largely to the discretion of the trial court. *State v. Locklear*, 291 N.C. 598, 231 S.E.2d 256 (1977).

Counsel May Argue Both Law and Fact. —

Counsel for both sides are entitled to argue to the jury the law and the facts in evidence and all reasonable inferences to be drawn therefrom. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

It is a basic right of a litigant to have his counsel argue his case to the jury on questions of law and of fact. *Board of Transp. v. Wilder*, 28 N.C. App. 105, 220 S.E.2d 183 (1975).

Counsel may argue the facts in evidence and all reasonable inferences to be drawn therefrom, together with the relevant law, so as to present his case. *State v. Locklear*, 291 N.C. 598, 231 S.E.2d 256 (1977).

Counsel may not argue principles of law not relevant to the case. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

The law which this provision allows to be argued must of course be the law applicable to the facts of the case. The whole corpus juris is not fair game. *State v. McMorris*, 290 N.C. 286, 225 S.E.2d 553 (1976).

Wide latitude is given counsel, etc. —

Counsel must be allowed wide latitude in the argument of hotly contested cases. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975); *State v. Cousins*, 289 N.C. 540, 223 S.E.2d 338 (1976); *State v. Locklear*, 291 N.C. 598, 231 S.E.2d 256 (1977).

Because it is the duty of the prosecuting attorney to present the State's case with earnestness and vigor and to use every legitimate means to bring about a just conviction, in the discharge of that duty he should not be so restricted as to discourage a vigorous presentation of the State's case to the jury. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Wide latitude is given to counsel in the argument of contested cases. *State v. Alford*, 289 N.C. 372, 222 S.E.2d 222 (1976).

Wide latitude should be given counsel to argue to the jury all the law and the facts presented by the evidence and all reasonable inferences therefrom. *State v. McCall*, 289 N.C. 512, 223 S.E.2d 303 (1976).

Counsel is given wide latitude to argue the facts and all reasonable inferences which may be drawn therefrom, together with the relevant law, in presenting the case to the jury. *State v. Britt*, 291 N.C. 528, 231 S.E.2d 644 (1977).

Counsel may read or state, etc. —

In accord with original. See *State v. McMorris*, 290 N.C. 286, 225 S.E.2d 553 (1976); *State v. Irick*, 291 N.C. 480, 231 S.E.2d 833 (1977).

But May Not State Law Incorrectly, etc. —

In accord with original. See *State v. McMorris*, 290 N.C. 286, 225 S.E.2d 553 (1976); *State v. Irick*, 291 N.C. 480, 231 S.E.2d 833 (1977).

And May Not Argue, etc. —

In accord with original. See *State v. Irick*, 291 N.C. 480, 231 S.E.2d 833 (1977).

The State or the defendant should not be allowed to speculate upon the outcome of possible appeals, paroles, executive commutations or pardons. *State v. McMorris*, 290 N.C. 286, 225 S.E.2d 553 (1976).

Incompetent and Prejudicial Matters. — Counsel may not place before the jury incompetent and prejudicial matters, and may not "travel outside the record" by injecting into his argument facts of his own knowledge or other facts not included in the evidence. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Counsel may not by his argument place before the jury incompetent and prejudicial matter not admissible into evidence. *State v. Cousins*, 289 N.C. 540, 223 S.E.2d 338 (1976).

When evidence forbidden by statute is argumentatively placed before the jury and used to the prejudice of the defense, it is the duty of the trial judge to intervene on his own motion and instruct the jury that the evidence, and the improper argument concerning the evidence, must be disregarded and under no circumstances used to the prejudice of the defendant. *State v. McCall*, 289 N.C. 570, 223 S.E.2d 334 (1976).

A prosecuting attorney may not place before the jury incompetent and prejudicial matters not admissible in evidence or include in his argument facts not included in the evidence. *State v. Taylor*, 289 N.C. 223, 221 S.E.2d 359 (1976).

As a general rule, it is improper for the prosecuting attorney to express his personal opinion or belief in the guilt of the accused, unless it is apparent that such opinion is based solely on the evidence, and not on any reasons or information outside the evidence. *State v. Britt*, 291 N.C. 528, 231 S.E.2d 644 (1977).

Language may be used consistent with the facts in evidence to present each side of the case. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975).

Counsel may not "travel outside the record" in his argument to the jury. *State v. Cousins*, 289 N.C. 540, 223 S.E.2d 338 (1976).

Counsel may not travel outside the record and place before the jury an incompetent and prejudicial theory of the case grounded wholly on personal beliefs and opinions not supported by the evidence. *State v. Britt*, 288 N.C. 699, 220 S.E.2d 283 (1975).

Improper to Comment on Character or Conduct of Opposing Party or Attorney. — Where counsel's remarks are not sustained by the facts it is improper for counsel in argument to make statements reflecting on the character or conduct of the opposite party or his attorney. *State v. Taylor*, 289 N.C. 223, 221 S.E.2d 359 (1976).

Defense Counsel "Opened the Door" to Prosecutor's Attacks. — Defendant's contention that the district attorney's argument to the jury referring repeatedly to the fact that defense counsel was from another part of the State constituted prejudicial error and denied the defendant due process and the effective assistance of counsel was overruled where defense counsel had opened the door with abusive comments attacking the credibility of two State witnesses and the honesty of two local law-enforcement officers. *State v. McCall*, 289 N.C. 512, 223 S.E.2d 303 (1976).

It is improper for a lawyer in his argument to assert his opinion that a witness is lying. *State v. McCall*, 289 N.C. 512, 223 S.E.2d 303 (1976).

While counsel can argue to the jury that they should not believe a witness, he should not call him a liar. *State v. McCall*, 289 N.C. 512, 223 S.E.2d 303 (1976).

An objection to argument of counsel must be made at the time of the argument, so as to give the court an opportunity to correct the transgression, if any. *State v. Coffey*, 289 N.C. 431, 222 S.E.2d 217 (1976).

Or Before Verdict. — Exception to improper remarks of counsel during argument must be taken before verdict. *State v. Alford*, 289 N.C. 372, 222 S.E.2d 222 (1976); *State v. Coffey*, 289 N.C. 431, 222 S.E.2d 217 (1976).

Ordinarily, an objection to the arguments by counsel must be made before verdict, since only when the impropriety is gross is the trial court required to correct the abuse *ex mero motu*. *State v. Britt*, 291 N.C. 528, 231 S.E.2d 644 (1977).

Or Else Waived. — Objection to any impropriety in counsel's argument to the jury is waived by waiting until after the verdict to enter the objection. *State v. Coffey*, 289 N.C. 431, 222 S.E.2d 217 (1976).

Exceptions to improper remarks of counsel during argument to the jury, like those to the admission of incompetent evidence, must be made in apt time or else be lost. *State v. Alford*, 289 N.C. 372, 222 S.E.2d 222 (1976).

After verdict, an objection to an impropriety in the argument comes too late. *State v. Locklear*, 291 N.C. 598, 231 S.E.2d 256 (1977).

Capital Case Exception. — An exception to the general rule that objections to counsel's argument to the jury must be made before verdict is recognized in capital cases where the improper argument was so prejudicial in nature that, in the opinion of the court, no instruction by

the trial court could have removed it from the minds of the jury had the objection been seasonably made. *State v. Coffey*, 289 N.C. 431, 222 S.E.2d 217 (1976).

The general rule that exceptions to improper remarks of counsel during argument must be taken before verdict has been modified so that it does not apply to death cases where the argument of counsel is so prejudicial to defendant that the prejudicial effect of such argument could not have been removed from the jurors' minds by any instruction the trial judge might have given. *State v. Alford*, 289 N.C. 372, 222 S.E.2d 222 (1976).

Duty of Court to Censor Remarks. — The trial court has a duty, upon objection, to censor remarks not warranted by either the evidence or the law, or remarks calculated to mislead or prejudice the jury. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975); *State v. Britt*, 288 N.C. 699, 220 S.E.2d 283 (1975); *State v. Locklear*, 291 N.C. 598, 231 S.E.2d 256 (1977).

If the impropriety in counsel's closing argument is gross, it is proper for the court, even in the absence of objection, to correct the abuse *ex mero motu*. *State v. Monk*, 286 N.C. 509, 212 S.E.2d 125 (1975); *State v. Britt*, 288 N.C. 699, 220 S.E.2d 283 (1975); *State v. Locklear*, 291 N.C. 598, 231 S.E.2d 256 (1977).

The trial court is required, upon objection, to censor remarks either not warranted by the law or facts or made only to prejudice or mislead the jury. *State v. Britt*, 291 N.C. 528, 231 S.E.2d 644 (1977).

Grounds for Review of Judge's Discretion. — Exercise of the trial judge's discretion in controlling jury arguments is not reviewed unless the impropriety of counsel's remarks is extreme and is clearly calculated to prejudice the jury in its deliberations. *State v. Taylor*, 289 N.C. 223, 221 S.E.2d 359 (1976).

It is well settled that the control of the jury arguments of counsel must be left largely to the discretion of the trial court and its rulings thereon will not be disturbed in the absence of gross abuse of discretion. *State v. Small*, 31 N.C. App. 556, 230 S.E.2d 425 (1976), cert. denied, 291 N.C. 715, 232 S.E.2d 207 (1977).

The argument of counsel must ordinarily be left to the sound discretion of the judge who tries the case and this court will not review his discretion unless it is apparent that the impropriety of counsel was gross and well calculated to prejudice the jury. *State v. Locklear*, 291 N.C. 598, 231 S.E.2d 256 (1977).

ARTICLE 4.

North Carolina State Bar.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 84-17. Government. — The government of the North Carolina State Bar shall be vested in a council of the North Carolina State Bar, hereinafter referred to as the "council," consisting of one councilor from each judicial district of the State, to be appointed or elected as hereinafter set forth, the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar whose term of office expires beginning with the annual meeting in 1973, who shall be a councilor for a period of one year from the date of the expiration of his term as president: Provided, that this shall not affect any president retiring prior to 1973. Notwithstanding any other provisions of the law, the North Carolina State Bar shall have the power and authority to acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The North Carolina State Bar Council is authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. Notwithstanding any provisions of this Article as to the voting powers of members, the council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this Article, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments hereto, and all other matters, except as otherwise directed or overruled, as in G.S. 84-33 provided. The councilors elected shall serve as follows: Those elected from the first, fourth, seventh, tenth, thirteenth, sixteenth, and nineteenth districts shall serve for one year from the date of their elections; those elected from the second, fifth, eighth, eleventh, fourteenth, seventeenth, and twentieth districts shall serve for two years from the date of their election; and those elected from the third, sixth, ninth, twelfth, fifteenth, and eighteenth districts shall serve for three years from the date of their election: Provided, that upon the election of successors to the councilors first elected, the term of office and the period for which such councilors are elected shall be three years from the date of election.

All councilors elected from any additional judicial district will be elected for a term of three years, except as may be hereinafter provided in G.S. 84-18 and G.S. 84-19. (1933, c. 210, s. 3; 1937, c. 51, s. 1; 1955, c. 651, s. 1; 1961, c. 641; 1973, c. 1152, s. 2; 1977, c. 841, s. 2.)

Editor's Note. —

The 1977 amendment added the present second and third sentences of the first paragraph.

§ 84-21. Organization of council; publication of rules, regulations and bylaws.

Cited in *In re Willis*, 286 N.C. 207, 209 S.E.2d 457 (1974).

§ 84-23. Powers of council. — Subject to the superior authority of the General Assembly to legislate thereon by general law, and except as herein otherwise limited, the council is hereby vested, as an agency of the State, with the control of the discipline, disbarment and restoration of attorneys practicing law in this State. The council shall have power to administer this Article; to formulate and adopt rules of professional ethics and conduct; to formulate and adopt rules and procedures for discipline, incapacity and disability hearings; to publish an official journal concerning matters of interest to the legal profession; to acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The North Carolina State Bar Council is authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes; and to do all such things necessary in the furtherance of the purposes of this Article as are not prohibited by law. (1933, c. 210, s. 9; 1935, c. 74, s. 1; 1937, c. 51, s. 2; 1975, c. 582, s. 3; 1977, c. 841, s. 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted a former proviso at the end of the first sentence relating to appeal to the superior court from an order of suspension or disbarment and inserted "to formulate and adopt rules and procedures for discipline, incapacity and disability hearings" in the second sentence.

The 1977 amendment divided the former second sentence into the present second and third sentences by adding the language beginning "to acquire, hold, rent, encumber, alienate" to the end of the present second

sentence and adding the language beginning "The North Carolina State Bar Council" and ending "in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes" to the beginning of the present third sentence.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

Cited in *In re Suspension of Right to Practice Law of Palmer*, 32 N.C. App. 449, 232 S.E.2d 497 (1977).

§ 84-23.1. Prepaid legal services. — (a) This section is in addition to and not a limitation of the powers and responsibilities of the council set out in G.S. 84-23. To the extent that this section deals with the same powers and responsibilities it shall be taken to be in amplification of those powers and not in derogation thereof.

(b) The council has the responsibility and duty of discipline and regulation of the practice of law in this State. Plans providing for prepaid legal services must be submitted to the council and may not be implemented or operated without the prior and continuing approval by the council as being proper under the statutes,

rules and regulations governing the practice of law in this State; provided, however, the council shall not approve any plan for prepaid legal services which in any way restricts the right of the client or person receiving prepaid legal services to select his own attorney from the actual members of the North Carolina State Bar, or a member of any other state bar in any other state where the claim or cause of action may arise.

(c) The council is authorized to initiate and cause the creation of a nonprofit corporation pursuant to Chapter 55A of the General Statutes, for the purpose of providing for prepayment for legal services. The corporation authorized by this section shall have the following powers:

- (1) To provide for the collection of payments for the plan or plans it offers, the payment of legal fees in accordance with its approved plans, and the investment and safeguarding of funds held for such purposes.
- (2) To contract with insurance companies or other companies for actuarial services, administrative and other services, use of facilities, underwriting and reinsurance.
- (3) All other powers necessary and appropriate for the offering of plans for prepaid legal services.
- (4) All other powers granted to nonprofit corporations by law or by virtue of their charters and bylaws.

The corporation may not directly employ an attorney to perform legal services for another person. It shall not be subject to regulation under Chapter 58 of the General Statutes or other provisions relating to insurance companies, but it shall be subject to regulation pursuant to subsection (b) of this section. Neither the existence of this authorization, nor the creation of such a corporation shall limit the authority of the council to approve other plans for prepaid legal services. The council may cause funds of the North Carolina State Bar to be contributed, advanced or loaned to, or used for the benefit of the corporation so created upon such terms as the council deems appropriate, and pursuant to such regulations as the council may promulgate to assure such funds are used for the purposes herein provided.

(d) Notwithstanding approval of the council pursuant to subsection (b), any plan for prepaid legal services other than pursuant to subsection (c) is subject to regulation under Chapter 58 of the General Statutes if offered by a company engaged in the insurance business or if the plan itself constitutes the offering of insurance.

(e) Notwithstanding any other provision of this section or any other statute or law, no plan providing for prepaid legal services shall be authorized to exist or function in the State of North Carolina which in any way restricts or denies the client or person receiving prepaid legal services the right to select an attorney of his own choice from the active membership of the North Carolina State Bar, or a member of any other state bar in any other state where the claim or cause of action may arise to represent said person or client. (1975, c. 707, s. 1.)

Editor's Note. — Session Laws 1975, c. 707, s. 2, contains a severability clause.

For article entitled, "Student Legal Services at the University of North Carolina at Chapel Hill," see 7 N.C. Cent. L.J. 286 (1976).

§ 84-24. Admission to practice. — The provisions of the law now obtaining with reference to admission to the practice of law, as amended, and the rules and regulations prescribed by the Supreme Court of North Carolina with reference thereto, shall continue in force until superseded, changed or modified by or under the provisions of this Article.

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the council of the North Carolina State Bar, who need not be members of the council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years: Provided, that the members first elected shall hold office, two for one year, two for two years, and two for three years.

The Board of Law Examiners shall elect a member of said Board as chairman thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable said Board to perform its duties promptly and properly. The chairman and any employees shall serve for such period as said Board may determine.

The examination shall be held in such manner and at such times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide such assistance as may be required to enable it to perform its duties promptly and properly.

The Board of Law Examiners, subject to the approval of the council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of such change.

All such rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the council.

Whenever the council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to such person, noting thereon that the same is issued in compliance with an order of the council of the North Carolina State Bar, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court. (1933, c. 210, s. 10; c. 331; 1935, cc. 33, 61; 1941, c. 344, s. 6; 1947, c. 77; 1951, c. 991, s. 1; 1953, c. 1012; 1965, cc. 65, 725; 1973, c. 13; 1977, c. 841, s. 2.)

Editor's Note. —

The 1977 amendment substituted "11 members" for "nine members" in the first sentence of the second paragraph.

Constitutionality. — The "character and general fitness" requirement of this section and the "good moral character" requirement of Rule VIII of the Rules Governing Admission to the Practice of Law are constitutionally permissible standards. In re Willis, 288 N.C. 1, 215 S.E.2d

771, appeal dismissed, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

While a state cannot exclude a person from the practice of law for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment, a state can require high standards for admission to the bar, including good moral character and proficiency in its laws, so long as the qualifying standards have a rational connection with the applicant's

fitness or capacity to practice law. In re Willis, 288 N.C. 1, 215 S.E.2d 771, appeal dismissed, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

The term "good moral character," although broad, has been so extensively used as a standard that its long usage and the case law surrounding that usage have given the term well-defined contours which make it a constitutionally appropriate standard. In re Willis, 288 N.C. 1, 215 S.E.2d 771, appeal dismissed, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

The Board of Law Examiners is, etc. —

This section establishes the Board of Law Examiners as an administrative agency of the State, and its findings of fact are conclusive on appeal if properly supported by the evidence. In re Willis, 288 N.C. 1, 215 S.E.2d 771, appeal dismissed, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

Rule-Making Power Delegated. —

In licensing those who desire to engage in professions or occupations such as may be

proper subjects of such regulation, the legislature may confer upon executive officers or bodies the power of granting or refusing to license persons to enter such trades or professions only when it has prescribed a sufficient standard for their guidance. In re Willis, 288 N.C. 1, 215 S.E.2d 771, appeal dismissed, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

The findings of fact, etc. —

As long as there is evidence in the record which rationally justifies a finding that the applicant has failed to establish his moral fitness to practice law, this court cannot substitute its judgment for that of the Board of Law Examiners. In re Willis, 288 N.C. 1, 215 S.E.2d 771, appeal dismissed, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

Cited in In re Willis, 286 N.C. 207, 209 S.E.2d 457 (1974).

§ 84-28. Discipline and disbarment. — (a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the council of the North Carolina State Bar under such rules and procedures as the council shall promulgate as provided in G.S. 84-21.

(b) The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice under G.S. 84-4.1, individually or in concert with any other person or persons, shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:

- (1) Conviction of a criminal offense showing professional unfitness;
 - (2) The violation of the Code of Professional Responsibility adopted and promulgated by the council of the North Carolina State Bar in effect at the time of the act;
 - (3) Knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct; failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter; or contempt of the council or any committee of the North Carolina State Bar.
- (c) Misconduct by any attorney shall be grounds for:
- (1) Disbarment; or
 - (2) Suspension for a period not exceeding three years; or
 - (3) Public censure; or
 - (4) Private reprimand.

(d) Any attorney admitted to practice law in this State who is convicted of a criminal offense showing professional unfitness may be suspended from the practice of law, but such suspension shall not take effect pending any appeal of the conviction.

(e) Any attorney admitted to practice law in this State who is disciplined in another jurisdiction shall be subject to the same discipline in this State: Provided, that the discipline imposed in the other jurisdiction does not exceed that provided for in subsection (c) above and that the attorney was not deprived of due process in the other jurisdiction.

(f) Upon application by the North Carolina State Bar, misconduct by an attorney admitted to practice in this State may be restrained or enjoined where

the necessity for prompt action exists regardless of whether a disciplinary proceeding in the matter of such conduct is pending. Such application shall be filed in the Superior Court of Wake County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65.

(g) Any member of the North Carolina State Bar may be transferred to inactive status for mental incompetence or physical disability interfering with the attorney's ability to competently engage in the practice of law under such rules and procedures as the council shall promulgate as provided in G.S. 84-21.

(h) There shall be an appeal of right from any final order imposing reprimand, censure, suspension or disbarment upon an attorney, or involuntary transferring a member of the North Carolina State Bar to inactive status for mental incompetence or physical disability, to the appellate division. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any such appeal shall be as provided by statute or court rule for appeals in civil cases. Any discipline imposed by such final order shall be stayed pending determination of the appeal.

(i) The North Carolina State Bar may invoke the process of the General Court of Justice to enforce the powers of the council or any committee to which the council delegates its authority.

(j) The North Carolina State Bar may apply to appropriate courts for orders necessary to protect the interests of clients of missing, disabled, incapacitated or deceased attorneys.

The senior regular resident judge of the superior court of any district wherein a member of the North Carolina State Bar resides or maintains an office shall have the authority and power to enter such orders as are necessary to protect the interests of such clients, including the authority to order the payment of counsel fees from the estate of the member to any attorney appointed to administer or conserve the law practice of the member. (1933, c. 210, s. 11; 1937, c. 51, s. 3; 1959, c. 1282, ss. 1, 2; 1961, c. 1075; 1969, c. 44, s. 61; 1975, c. 582, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote this section.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

Summary Disbarment by Court, etc. —

In accord with original. See *In re Suspension of Right to Practice Law of Palmer*, 32 N.C. App. 449, 232 S.E.2d 497 (1977).

Disbarment for Crime — Entry of Judgment of Conviction on Plea of Nolo Contendere. —

An adjudication of guilt and judgment of

conviction entered on a plea of nolo contendere were sufficient to prove "commission of a criminal offense showing professional unfitness." *North Carolina State Bar v. Hall*, 31 N.C. App. 166, 229 S.E.2d 39 (1976) (decided prior to the 1975 amendment).

When Due Process Requires, etc. —

In accord with original. See *In re Suspension of Right to Practice Law of Palmer*, 32 N.C. App. 449, 232 S.E.2d 497 (1977).

Committee to Investigate Facts. —

In accord with original. See *In re Suspension of Right to Practice Law of Palmer*, 32 N.C. App. 449, 232 S.E.2d 497 (1977).

§ 84-28.1. Disciplinary hearing commission. — (1) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of 15 members. Ten of these members shall be members of the North Carolina State Bar, and shall be appointed by the council. The other five shall be citizens of North Carolina not licensed to practice law in this or any other state, three of whom shall be appointed by the Governor, one by the Lieutenant Governor, and one by the Speaker of the House of Representatives. The council shall designate one of its appointees as chairman and another as vice-chairman. The chairman shall have actively practiced law in the courts of the State for at least 10 years. When the commission is first selected, five members, including three appointed by the council, one appointed by the Governor and the one

appointed by the Speaker of the House of Representatives, shall be appointed for terms of one year; five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Lieutenant Governor, shall be appointed for terms of two years; and the remaining five members shall be appointed for terms of three years. All such initial terms shall commence July 1, 1975. Thereafter five members shall be appointed each year to three-year terms to fill the positions of the terms then expiring. The council, the Governor, the Lieutenant Governor and the Speaker of the House of Representatives, respectively, shall appoint members to fill the unexpired term when any vacancy is created by resignation, disqualification, disability or death. No member may serve more than a total of six years or two consecutive terms: Provided, that any member or former member who is designated chairman may serve one additional three-year term in that capacity. No member of the council may be appointed to the commission.

(2) The disciplinary hearing commission of the North Carolina State Bar, or any committee thereof, is authorized to hold hearings in discipline, incapacity and disability matters, to make findings of fact and conclusions of law after such hearings, and to enter orders necessary to carry out the duties delegated to it by the council.

(3) Members of the disciplinary hearing commission shall receive the same per diem and travel expenses as are authorized for members of State commissions under G.S. 138-5. (1975, c. 582, s. 6.)

Editor's Note. — Session Laws 1975, c. 582, s. 13, makes the act effective July 1, 1975, and provides that it shall apply to all cases, actions and proceedings arising on and after that date.

§ 84-28.2. Persons immune from suit. — Persons shall be immune from suit for all statements made without malice, and intended for transmittal to the North Carolina State Bar or any committee, officer, agent or employee thereof, or given in any investigation or proceedings, pertaining to alleged misconduct, incapacity or disability or to reinstatement of an attorney. The protection of this immunity does not exist, however, as to statements made to others not intended for such use. (1975, c. 582, s. 4.)

Editor's Note. — Session Laws 1975, c. 582, s. 13, makes the act effective July 1, 1975, and provides that it shall apply to all cases, actions and proceedings arising on and after that date.

§ 84-29. Evidence and witnesses. — In any investigation of charges of professional misconduct, incapacity or disability the council and any committee thereof, and the disciplinary hearing commission, and any committee thereof, may administer oaths and affirmations and shall have the power to subpoena and examine witnesses under oath, and to compel their attendance, and the production of books, papers and other documents or writings deemed by it necessary or material to the inquiry. Each subpoena shall be issued under the hand of the secretary-treasurer or the president of the council or the chairman of the committee appointed to hear the charges, and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the council or its committee, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings, but the council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the State be brought before it. Witnesses giving testimony under a subpoena before

the council or any committee thereof, or the disciplinary hearing commission or any committee thereof, or by deposition, shall be entitled to the same fees as in civil actions.

In cases heard before the council or any committee thereof or the disciplinary hearing commission or any committee thereof, if the party shall be convicted of the charges against him, he shall be taxed with the cost of the hearings: Provided, however, that such bill of costs shall not include any compensation to the members of the council or committee before whom the hearings are conducted. (1933, c. 210, s. 12; 1959, c. 1282, s. 2; 1975, c. 582, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the first sentence, deleted "summons or" following "Each" at the beginning of the second sentence and substituted "the disciplinary hearing commission or any committee thereof" for "any committee designated by the Supreme Court" in

the fourth sentence of the first paragraph and near the beginning of the second paragraph.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

§ 84-30. Rights of accused person. — Any person who shall stand charged with an offense cognizable by the council or any committee thereof or the disciplinary hearing commission or any committee thereof shall have the right to invoke and have exercised in his favor the powers of the council or any committee, in respect of compulsory process for witnesses and for the production of books, papers, and other writings and documents, and shall also have the right to be represented by counsel. (1933, c. 210, s. 13; 1959, c. 1282, s. 2; 1975, c. 582, s. 8.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "or the disciplinary hearing commission or any committee thereof" for "any committee designated by the Supreme Court" and "or any committee" for "and its committees, or any committee designated by the Supreme Court."

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions

and proceedings arising on and after its effective date.

Deprivation of Right to Practice Is Judicial Act Requiring Due Process. —

In accord with original. See *In re Suspension of Right to Practice Law of Palmer*, 32 N.C. App. 449, 232 S.E.2d 497 (1977).

§ 84-31. Counsel; investigators; powers; compensation. — The council may appoint a member of the North Carolina State Bar to prosecute charges of misconduct, incapacity or disability in such hearings as may be held, including appeals, and may authorize such counsel to employ assistant counsel, investigators, and administrative assistants in such numbers as it deems necessary. Counsel and investigators engaged in discipline, incapacity and disability matters shall have the authority throughout the State to serve subpoenas or other process issued by the council or any committee thereof or the disciplinary hearing commission or any committee thereof, in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice. The council may allow counsel, assistant counsel, investigators and administrative assistants such compensation as it deems proper. (1933, c. 210, s. 14; 1969, c. 44, s. 62; 1975, c. 582, s. 9.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions

and proceedings arising on and after its effective date.

§ 84-32. Records and judgments and their effect; restoration of licenses. — In cases heard by the disciplinary hearing commission or any committee thereof, a complete record of the proceedings and evidence shall be made and preserved in the office of the secretary-treasurer. Final judgments of suspension or disbarment shall be entered upon the judgment docket of the superior court in the district wherein the accused resides or practices law, and also upon the minutes of the Supreme Court of North Carolina; and such judgment shall be effective throughout the State.

Whenever an attorney desires to voluntarily surrender his license to the council and the council consents to accept the same, he shall make such request and surrender in writing directed to the council and the council shall enter an order containing the conditions of acceptance of said license, and a copy of such order shall be filed with the clerk of the Supreme Court and with the clerk of the superior court of the county of residence or prior residence of the licensee or the county wherein the attorney maintains an office for the practice of law; provided, however, that the council may refuse to accept surrender of license in any case.

Whenever any attorney has been deprived of his license, the council, in its discretion, may restore said license upon due notice being given and satisfactory evidence produced of proper reformation of the licentiate before restoration. The council may prescribe rules and procedures for the conduct of any hearing regarding restoration and may require the disciplinary hearing commission or a committee thereof to conduct such hearing. (1933, c. 210, s. 15; 1935, c. 74, s. 2; 1953, c. 1310, s. 4; 1959, c. 1282, s. 2; 1975, c. 582, s. 10.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the first paragraph, inserted "or the county wherein the attorney maintains an office for the practice of law" near the end of the second paragraph, deleted "and hearing had" following "notice being given" in the first sentence of the third

paragraph and added the second sentence of the third paragraph.

Section 13 of the 1975 amendatory act provides that it shall apply to all cases, actions and proceedings arising on and after its effective date.

§ 84-34. Membership fees and list of members. — Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, beginning with the year 1975, pay to the secretary-treasurer an annual membership fee of seventy-five dollars (\$75.00), and every member shall notify the secretary-treasurer of his correct post-office address. All dues for prior years shall be as were set forth in the General Statutes then in effect. The said membership fee shall be regarded as a service charge for the maintenance of the several services prescribed in this Article, and shall be in addition to all fees now required in connection with admissions to practice, and in addition to all license taxes now or hereafter required by law. The said fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of July of the second calendar year (a "calendar year" for the purposes of this Article being treated as the period from January 1 to December 31) following that in which he shall have been licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The said fees shall be disbursed by the secretary-treasurer on the order of the council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the council, publish an account of the financial transaction of the council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and post-office addresses forwarded to him and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first

day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who shall be in arrears in the payment of membership fees for one or more calendar years shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein said member or members reside, and the court shall thereupon take such action as is necessary and proper. The names and addresses of such attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from his record of license tax payments, with any information for which the secretary-treasurer may call in order to enable him to comply with this requirement.

The said list submitted to several clerks of the superior court shall also be submitted to the council of the North Carolina State Bar at its October meeting of each year and it shall take such action thereon as is necessary and proper. (1933, c. 210, s. 17; 1939, c. 21, ss. 2, 3; 1953, c. 1310, s. 5; 1955, c. 651, s. 4; 1961, c. 760; 1971, c. 18; 1973, c. 476, s. 193; c. 1152, s. 4; 1977, c. 841, s. 2.)

Editor's Note. —

The 1977 amendment, effective Jan. 1, 1978, substituted "seventy-five dollars (\$75.00)" for "forty-five dollars (\$45.00)" in the first sentence.

§ 84-36. Inherent powers of courts unaffected.

Quoted in *In re Suspension of Right to Practice Law of Palmer*, 32 N.C. App. 449, 232 S.E.2d 497 (1977).

§ 84-36.1. Clerks of court to certify orders. — The clerk of any court of this State in which a member of the North Carolina State Bar is convicted of any criminal offense, disciplined, found to be in contempt of the court or adjudged incompetent shall transmit a certified copy of the order or judgment to the secretary-treasurer of the North Carolina State Bar within 10 days of the entry of such judgment or order. (1975, c. 582, s. 11.)

Editor's Note. — Session Laws 1975, c. 582, s. 13, makes the act effective July 1, 1975, and provides that it shall apply to all cases, actions and proceedings arising on and after that date.

Chapter 85A.

Bail Bondsmen and Runners.

§§ 85A-1 to 85A-34: Recodified as §§ 85C-1 to 85C-41, effective October 1, 1975.

Editor's Note. — This Chapter was rewritten by Session Laws 1975, c. 619, s. 1, effective Oct. 1, 1975, and has been recodified as Chapter 85C.

Former § 85A-34 was amended by Session Laws 1975, c. 16, which made the Chapter

applicable to Burke County, and by Session Laws 1975, c. 560, which made the Chapter applicable to Carteret, Craven, Forsyth, Pitt and Pamlico Counties.

Chapter 85B.

Auctions and Auctioneers.

Sec.

85B-2. Activities governed by Chapter.

85B-3. Auctioneers Commission.

85B-4. Licenses required.

85B-6. Fees; local governments not to charge fees or require licenses.

Sec.

85B-8. Prohibited acts; suspension or revocation of license.

85B-9. Penalties and enforcement.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 85B-2. Activities governed by Chapter. — This Chapter shall apply to all auctions held in this State except the following:

(9a) Sales conducted by and on behalf of a civic club, not exceeding one sale per year;
(1977, c. 1115.)

Editor's Note. — The 1977 amendment added subdivision (9a).

As the other subdivisions were not changed

by the amendment, only the introductory language and subdivision (9a) are set out.

§ 85B-3. Auctioneers Commission.

(g) Members of the Commission shall receive the compensation set for members of occupational licensing boards by G.S. 93B-5. (1973, c. 552, s. 3; 1975, c. 648, s. 1.)

Editor's Note. — The 1975 amendment rewrote subsection (g).

As the rest of the section was not changed by the amendment, only subsection (g) is set out.

§ 85B-4. Licenses required.

(d) No person shall be licensed as an auctioneer unless he has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer

business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in Raleigh, and at such other times and places as the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has been in the auctioneer business in this State for at least two years prior to the effective date of this act, and who makes proper application to the Commission within one year after July 1, 1973, may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice of two years, and without taking the examination required by this subsection. Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution approved by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but must take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of his performance as an apprentice auctioneer. If the applicant is exempted from apprenticeship because he has completed the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of his course work in auctioneering. Each application shall be accompanied by statements of at least two residents of North Carolina attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license.

(e) Each license issued under this Chapter shall be valid from July 1 of the year issued, or from the date issued, whichever is later, to June 30 of the succeeding year and may be renewed for one year at a time, except an apprentice auctioneer license may not be renewed for more than three times. No examination shall be required for renewal of an auctioneer license if the application for renewal is made within 90 days of the expiration of the previous license.

(g) A sole proprietorship, partnership, or corporation which in the regular course of business promotes auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions, must be licensed as an auctioneer business even though no owner or officer of that business acts as an auctioneer. To be licensed as an auctioneer business the sole proprietorship, partnership or corporation must file an approved bond as required for a licensed auctioneer by subsection (f) and must pay the proper fees as set out in G.S. 85B-6, but is not otherwise required to meet qualifications for an auctioneer license. Licensed auctioneer businesses shall be covered by the provisions of G.S. 85B-8.

(1975, c. 648, ss. 2-4.)

Editor's Note. —

The 1975 amendment substituted "Commission" for "Committee" at the end of the second sentence of the second paragraph of subsection (d), and in subsection (e), substituted "license issued under this Chapter" for "apprentice auctioneer and auctioneer license" and the language beginning "from July 1 of the year issued" and ending "June 30 of the

succeeding year" for "for one year," deleted "that" preceding "an apprentice auctioneer license," and inserted "for" following "may not be renewed." The amendment also rewrote subsection (g).

As the rest of the section was not changed by the amendment, only subsections (d), (e) and (g) are set out.

§ 85B-6. Fees; local governments not to charge fees or require licenses. —

The Commission shall collect and remit to the State Treasurer the following fees: fifty dollars (\$50.00) for application for apprentice auctioneer license; twenty-five dollars (\$25.00) for apprentice auctioneer license for one year; twenty-five dollars (\$25.00) for application for auctioneer license and for examination; one hundred dollars (\$100.00) for auctioneer license for one year; seventy-five dollars (\$75.00) for designation as licensed auctioneer business.

No local government or agency of local government may charge any auctioneer fees or require any auctioneer licenses in addition to those set out in this Chapter. (1973, c. 552, s. 6; c. 1195, s. 3; 1975, c. 648, s. 5.)

Editor's Note. —

The 1975 amendment substituted "business" for "partnership or corporation" at the end of the first paragraph.

§ 85B-8. Prohibited acts; suspension or revocation of license. — (a) The following shall be grounds for suspension or revocation of an auctioneer or apprentice auctioneer license:

- (1) Any violation of this Chapter or any violation of a rule or regulation duly adopted by the Commission;
- (2) A continued and flagrant course of misrepresentation or making false promises, either by the auctioneer or by someone acting in his behalf and with his consent;
- (3) Any failure to account for or to pay over within a reasonable time, not to exceed 30 days, money belonging to another which has come into the auctioneer's possession through an auction sale;
- (4) Any misleading or untruthful advertising;
- (5) Any act of conduct in connection with a sales transaction which demonstrates bad faith or dishonesty;
- (6) Knowingly using false bidders, cappers or pullers, or making a material false statement for license;
- (7) Commingling the money or property of a client with his own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in North Carolina money received for another person through sale at auction.

(1975, c. 648, s. 6.)

Editor's Note. —

The 1975 amendment added subdivision (7) to subsection (a).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 85B-9. Penalties and enforcement. — (a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a misdemeanor and shall be punished by fine, or imprisonment, or both, in the discretion of the court.

(1975, c. 648, s. 7.)

Editor's Note. — The 1975 amendment substituted "of" for "or" following "association" in subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

Chapter 85C.

Bail Bondsmen and Runners.

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| Sec. | Sec. |
| 85C-1. Definitions. | 85C-22. Persons prohibited from becoming surety or runners. |
| 85C-2. Commissioner of Insurance to administer Chapter; rules and regulations; employees; evidence of Commissioner's actions. | 85C-23. Bonds not to be signed in blank; authority to countersign only given to licensed employee. |
| 85C-3. Defects not to invalidate undertakings; liability not affected by agreement or lack of qualifications. | 85C-24. Insurers to annually report surety bondsmen; notices of appointments and terminations; information confidential. |
| 85C-4. Qualifications of sureties on bail. | 85C-25. Bail bondsman to give notice of discontinuance of business; cancellation of license. |
| 85C-5. Surrender of defendant by surety; when premium need not be returned. | 85C-26. Persons eligible as runners; bail bondsmen to annually report runners; notices of appointments and terminations; information confidential. |
| 85C-6. Procedure for surrender; exoneration of obligors; refund of deposit. | 85C-27. Substituting bail by sureties for deposit. |
| 85C-7. Arrest of defendant for purpose of surrender. | 85C-28. Deposit for defendant admitted to bail authorizes release and cancellation of undertaking. |
| 85C-8. Forfeiture of bail. | 85C-29. Registration of licenses and power of appointments by insurers. |
| 85C-9. Bail bondsmen and runners to be qualified and licensed; only individuals to be licensed; license applications generally. | 85C-30. Financial responsibility of professional bondsmen. |
| 85C-10. Expiration of licenses. | 85C-31. Securities held in trust by Commissioner; authority to dispose of same. |
| 85C-11. Qualification for professional bondsman and runners. | 85C-32. Bondsman to furnish power of attorney with securities. |
| 85C-12. License fees. | 85C-33. Security deposit to be maintained. |
| 85C-13. Annual financial statement of professional bondsmen. | 85C-34. Monthly report required. |
| 85C-14. Contents of application for runner's license; endorsement by bail bondsman. | 85C-35. Examinations. |
| 85C-15. Examination; fees. | 85C-36. Limit on principal amount of bond to be written by professional bondsman. |
| 85C-16. Renewal of licenses; fees. | 85C-37. Disposition of fees. |
| 85C-17. Grounds for denial, suspension, revocation or refusal to renew licenses. | 85C-38. Penalties for violations. |
| 85C-18. Notice and hearing before refusal, suspension, revocation, etc., of license. | 85C-39. Duplication of regulation forbidden. |
| 85C-19. Appeal from denial, suspension, revocation or refusal to renew license. | 85C-40. Conflicting laws. |
| 85C-20. Prohibited practices. | 85C-41. Application of Chapter. |
| 85C-21. Receipts for collateral. | |

Editor's Note. — This Chapter is Chapter 85A as rewritten by Session Laws 1975, c. 619, s. 1, effective Oct. 1, 1975, and recodified. Where appropriate, the historical citations to the sections of the former Chapter have been added to the corresponding sections of the new Chapter.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to

conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be

terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 85C-1. Definitions. — The following words when used in this Chapter shall have the following meanings:

- (1) "Accommodation bondsman" is a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. "Consideration" as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of said bail bond.
- (2) "Bail bond" shall mean an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 109-25, and an appearance bond secured by at least one surety.
- (3) "Bail bondsman" shall mean a surety bondsman, professional bondsman or an accommodation bondsman as hereinafter defined.
- (4) "Commissioner" shall mean the Commissioner of Insurance.
- (5) "Insurer" shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.
- (6) "Obligor" shall mean a principal or a surety on a bail bond.
- (7) "Principal" shall mean a defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.
- (8) "Professional bondsman" shall mean any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.
- (9) "Runner" shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. "Runner" does not include, however, a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.
- (10) "Surety" shall mean one who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

- (11) "Surety bondsman" shall mean any person who is approved by and licensed by the Commissioner as an insurance agent pursuant to the provisions of Chapter 58 of the General Statutes of North Carolina and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings and receives or is promised money or other things of value therefor. (1963, c. 1225, s. 1; 1975, c. 619, s. 1.)

§ 85C-2. Commissioner of Insurance to administer Chapter; rules and regulations; employees; evidence of Commissioner's actions. — (a) The Commissioner shall have full power and authority to administer the provisions of this Chapter, which regulates bail bondsmen and runners and to that end to adopt and promulgate rules and regulations to enforce the purposes and provisions of this Chapter. Subject to the provisions of the State Personnel Act, the Commissioner may employ and discharge such employees, examiners, investigators and such other assistants as shall be deemed necessary, and he shall prescribe their duties.

(b) Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the Commissioner, or any record of the Commissioner authenticated under the head of the Commissioner by the seal of his office shall be accepted by all the courts of this State as prima facie evidence of the contents thereof. (1963, c. 1225, s. 2; 1975, c. 619, s. 1.)

§ 85C-3. Defects not to invalidate undertakings; liability not affected by agreement or lack of qualifications. — No undertaking shall be invalid, nor shall any person be discharged from his undertaking, nor a forfeiture thereof be stayed, nor shall judgment thereon be stayed, set aside or reversed, the collection of any such judgment be barred or defeated by reason of any defect of form, omission or recital or of condition, failure to note or record the default of any principal or surety, or because of any other irregularity, or because the undertaking was entered into on Sunday or other holiday, if it appears from the tenor of the undertaking before what magistrate or at what court the principal was bound to appear, and that the official before whom it was entered into was legally authorized to take it and the amount of bail is stated.

The liability of a person on an undertaking shall not be affected by reason of the lack of any qualifications, sufficiency or competency provided in the criminal procedure law, or by reason of any other agreement whether or not the agreement is expressed in the undertaking, or because the defendant has not joined in the undertaking. (1963, c. 1225, s. 3; 1975, c. 619, s. 1.)

§ 85C-4. Qualifications of sureties on bail. — Each and every surety for the release of a person on bail shall be qualified as:

- (1) An insurer and represented by a surety bondsman or bondsmen; or
- (2) A professional bondsman; or
- (3) An accommodation bondsman. (1963, c. 1225, s. 4; 1971, c. 1231, s. 1; 1975, c. 619, s. 1.)

§ 85C-5. Surrender of defendant by surety; when premium need not be returned. — At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed; in such case the full premium shall be returned. The defendant may be surrendered without the return of premium for the bond if he has been guilty of nonpayment of premium, changing address without notifying his bondsman, concealing himself, leaving the jurisdiction of the court

without the permission of his bondsman or violating his obligation to the court. (1963, c. 1225, s. 5; 1975, c. 619, s. 1.)

§ 85C-6. Procedure for surrender; exoneration of obligors; refund of deposit. — The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.

Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded. (1963, c. 1225, s. 6; 1975, c. 619, s. 1.)

§ 85C-7. Arrest of defendant for purpose of surrender. — For the purpose of surrendering the defendant, the surety may arrest him before the forfeiture of the undertaking, or by his written authority endorsed on a certified copy of the undertaking, may request any judicial officer to order arrest of the defendant. (1963, c. 1225, s. 7; 1975, c. 619, s. 1.)

§ 85C-8. Forfeiture of bail. — (a) The procedure for forfeiture of bail shall be that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of that Article shall continue in full force and effect.

(b) At any time before execution is issued on a judgment of forfeiture against a principal or his surety, the court may direct that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. (1963, c. 1225, s. 8; 1975, c. 619, s. 1.)

§ 85C-9. Bail bondsmen and runners to be qualified and licensed; only individuals to be licensed; license applications generally. — No person shall act in the capacity of a bail bondsman or runner or perform any of the functions, duties, or powers prescribed for bail bondsmen or runners under the provisions of this Chapter unless that person shall be qualified and (except as regards an accommodation bondsman) licensed in accordance with the provisions of this Chapter. No license shall be issued to a professional bondsman or runner except as provided in this Chapter and none shall be issued except to an individual natural person.

The applicant shall apply for license or renewal thereof on forms prepared and supplied by the Commissioner and the Commissioner may propound any reasonable interrogatories to an applicant for a license under this Chapter or on any renewal thereof, relating to his qualifications, residence, prospective place of business, and any other matters which, in the opinion of the Commissioner, are deemed necessary in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation he sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

The failure of the applicant to secure approval of the Commissioner shall not preclude him from applying as many times as he desires, but no application shall be considered by the Commissioner within one year subsequent to the date upon

which the Commissioner denied the last application. (1963, c. 1225, s. 9; 1975, c. 619, s. 1.)

§ 85C-10. Expiration of licenses. — All licenses issued pursuant to the provisions of this Chapter shall expire annually on June 30 unless revoked or suspended prior thereto by the Commissioner, or upon notice served upon the Commissioner that the employer of any runner has canceled the licensee's authority to act for such employer. (1963, c. 1225, s. 10; 1975, c. 619, s. 1.)

§ 85C-11. Qualification for professional bondsman and runners. — Before license can issue to an applicant permitting him to act as a professional bondsman or runner, he must furnish the Commissioner a complete set of his fingerprints and a recent passport size full-face photograph of himself. The applicant's fingerprints shall be certified by an authorized law-enforcement officer.

Every applicant for license as a professional bondsman or runner before being issued such license shall satisfy the Commissioner that he:

- (1) Is 18 years of age or over;
- (2) Is a resident of this State;
- (3) Is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude;
- (4) Has knowledge, training, or experience of sufficient duration and extent to reasonably satisfy the Commissioner that he possesses the competence necessary to fulfill the responsibilities of a licensee. (1963, c. 1225, s. 11; 1971, c. 1231, s. 1; 1975, c. 619, s. 1.)

§ 85C-12. License fees. — A license fee of thirty dollars (\$30.00) shall be paid to the Commissioner with each application for license as a professional bondsman and a license fee of ten dollars (\$10.00) shall be paid to the Commissioner with each application for license as a runner. (1963, c. 1225, s. 12; 1975, c. 619, s. 1.)

§ 85C-13. Annual financial statement of professional bondsmen. — In addition to the other requirements of this Chapter, an applicant for a professional bondsman's license shall furnish annually a financial statement under oath in such detail and form as the Commissioner may require and any such statement shall be subject to the same examination as is prescribed by law for domestic insurance companies. (1963, c. 1225, s. 13; 1975, c. 619, s. 1.)

§ 85C-14. Contents of application for runner's license; endorsement by bail bondsman. — In addition to the other requirements of this Chapter, an applicant for a license to be a runner must affirmatively show:

- (1) That the applicant will be employed by only one bail bondsman who will supervise the work of the applicant and be responsible for the runner's conduct in the bail bond business; and
- (2) That the application is endorsed by the appointing bail bondsman who shall obligate himself therein to supervise the runner's activities. (1963, c. 1225, s. 14; 1975, c. 619, s. 1.)

§ 85C-15. Examination; fees. — Except as hereinafter provided, an applicant for license to be a professional bondsman or runner shall be required to appear in person and take a written examination prepared by the Commissioner testing his ability and qualifications. Each applicant shall become eligible for examination 30 days after the date the application is received by the Commissioner. Examinations shall be held at such time and place as designated

by the Commissioner, and the applicant shall be given notice of such time and place not less than 15 days prior to taking the examination. The fee for such examination shall be fifteen dollars (\$15.00) for professional bondsmen and ten dollars (\$10.00) for runners. The failure of an applicant to pass an examination shall not preclude him from taking subsequent examinations; provided, however, that at least one year must intervene between examinations.

No person shall be required to submit to examination to obtain license as a professional bondsman if he is now licensed by the Commissioner of Insurance or the Secretary of Revenue and is performing the functions of a bondsman on the taking effect of this Chapter, and no person shall be required to submit to examination to obtain license as a runner if he is performing the functions of a runner on the taking effect of this Chapter. (1963, c. 1225, s. 15; 1975, c. 619, s. 1.)

§ 85C-16. Renewal of licenses; fees. — A renewal license shall be issued by the Commissioner to a licensee who has continuously maintained his license in effect without further examination upon the payment of a renewal fee of ten dollars (\$10.00) in case of runners and thirty dollars (\$30.00) in case of professional bondsmen, but such licensees shall in all other respects be required to comply with and be subject to the provisions of this Chapter. After the receipt of such licensee's application for renewal, the current license shall continue in effect until the renewal license is issued or denied for cause. (1963, c. 1225, s. 16; 1975, c. 619, s. 1.)

§ 85C-17. Grounds for denial, suspension, revocation or refusal to renew licenses. — (a) The Commissioner may deny, suspend, revoke or refuse to renew any license issued under this Chapter for any of the following causes:

- (1) For any cause sufficient to deny, suspend, or revoke license under any other provision of this Chapter.
- (2) Violation of any laws of this State relating to bail in the course of dealings under the license issued him by the Commissioner.
- (3) Material misstatement, misrepresentation or fraud in obtaining the license.
- (4) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.
- (5) Fraudulent or dishonest practices in the conduct of business under the license.
- (6) Conviction of a felony regardless of the time such conviction occurred and regardless of whether such conviction resulted from conduct in or related to the bail bond business.
- (7) Failure to comply with or violation of the provisions of this Chapter or of any order, rule or regulation of the Commissioner.
- (8) When in the judgment of the Commissioner, the licensee has in the conduct of his affairs under the license, demonstrated incompetency or untrustworthiness or that he is no longer in good faith carrying on the bail bond business or that he is guilty of rebating, or offering to rebate, or offering to divide the premiums received for the bond.
- (9) For failing to pay any judgment or decree rendered on any forfeited undertaking in any court of competent jurisdiction.
- (10) For charging or receiving, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by this Chapter.
- (11) For requiring, as a condition of his executing a bail bond, that the principal agree to engage the services of a specified attorney.

(b) The Commissioner, in lieu of revoking or suspending a license in accordance with the provisions of this Chapter, may, in any one proceeding, by order, require the licensee to pay to the school fund in the county of his residence a civil penalty in the sum of two hundred fifty dollars (\$250.00) for each offense. Upon failure of such licensee to pay penalty within 20 days after the mailing of such order, postage prepaid, registered and addressed to the last known place of business of such licensee, unless such order is stayed by an order of the court of competent jurisdiction, the Commissioner may revoke the license of such licensee or may suspend the same for such period as he may determine. (1963, c. 1225, s. 17; 1975, c. 619, s. 1.)

§ 85C-18. Notice and hearing before refusal, suspension, revocation, etc., of license. — No license shall be refused, suspended, revoked, or renewal refused except on reasonable notice and opportunity to be heard afforded the person licensed or renewal thereof. (1963, c. 1225, s. 18; 1975, c. 619, s. 1.)

§ 85C-19. Appeal from denial, suspension, revocation or refusal to renew license. — Any applicant for license as bail bondsman or runner whose application has been denied or whose license shall have been suspended or revoked, or renewal thereof denied, shall have the right of appeal from such final order of the Commissioner thereon pursuant to the provisions of G.S. 58-9.3. (1963, c. 1225, s. 19; 1975, c. 619, s. 1.)

§ 85C-20. Prohibited practices. — No bail bondsman or runner shall:

Pay a fee or rebate or give or promise anything of value, directly or indirectly, to a jailer, law-enforcement officer, committing magistrate, or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof, including the payment to law-enforcement officers, directly or indirectly, for the arrest or apprehension of a principal or principals who have caused or will cause a forfeiture.

Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.

Participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety, nor suggest or advise the employment of, or name for employment any particular attorney to represent his principal.

Accept anything of value from a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond, provided that the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond.

Solicit business in any of the courts or on the premises of any of the courts of this State, in the office of any magistrate and in or about any place where prisoners are confined. Loitering in or about a magistrate's office or any place where prisoners are confined shall be prima facie evidence of soliciting.

Advise or assist the principal for the purpose of forfeiting bond. (1963, c. 1225, s. 20; 1975, c. 619, s. 1.)

§ 85C-21. Receipts for collateral. — When a bail bondsman accepts collateral he shall give a written receipt for same, and this receipt shall give in detail a full description of the collateral received. (1963, c. 1225, s. 21; 1975, c. 619, s. 1.)

§ 85C-22. Persons prohibited from becoming surety or runners. — No sheriff, deputy sheriff, other law-enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of the General Court of Justice, [or] other public employee assigned to duties relating to the administration of criminal justice, may in any case become surety on a bail bond for any person. In addition, no person covered by this section may act as agent for any bonding company or professional bondsman. No such person may have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as bondsmen. Provided, however, nothing herein shall prohibit any person above designated from being surety upon the bond of his or her spouse, parent, brother, sister, child or descendant. (1963, c. 1225, s. 22; 1973, c. 108, s. 39; 1975, c. 619, s. 1.)

§ 85C-23. Bonds not to be signed in blank; authority to countersign only given to licensed employee. — A bail bondsman shall not sign nor countersign in blank bail bonds, nor shall he give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds unless the person so authorized is a licensed bondsman or runner directly employed by the bondsman giving such power of attorney. Copies of all such powers of attorney and revocations of such powers of attorney must be filed immediately with the Commissioner and the clerk of superior court of any county in the State where said bondsman giving the power of attorney is currently writing or is obligated on bail bonds. (1963, c. 1225, s. 23; 1975, c. 619, s. 1.)

§ 85C-24. Insurers to annually report surety bondsmen; notices of appointments and terminations; information confidential. — Every insurer shall annually prior to July 1, furnish the Commissioner a list of all surety bondsmen appointed by it to write bail bonds on its behalf. Every such insurer who subsequently appoints a surety bondsman in the State shall give notice thereof to the Commissioner. All such appointments shall be subject to the issuance of the proper insurance agent's license to the appointee.

An insurer terminating the appointment of a surety bondsman shall file written notice thereof with the Commissioner, together with a statement that it has given or mailed notice to the surety bondsman and to the clerk of superior court of any county in the State wherein such insurer has been obligated on bail bonds through said agent within the past three years. Such notice filed with the Commissioner shall state the reasons, if any, for such termination. Information so furnished the Commissioner shall be privileged and shall not be used as evidence in or basis for any action against the insurer or any of its representatives. (1963, c. 1225, s. 24; 1975, c. 619, s. 1.)

§ 85C-25. Bail bondsman to give notice of discontinuance of business; cancellation of license. — Any bail bondsman who discontinues writing bail bonds during the period for which he is licensed shall notify the clerks of the superior court with whom he is registered and return his license to the Commissioner for cancellation within 30 days after such discontinuance. (1963, c. 1225, s. 25; 1975, c. 619, s. 1.)

§ 85C-26. Persons eligible as runners; bail bondsmen to annually report runners; notices of appointments and terminations; information confidential. — Every person duly licensed as a bail bondsman may appoint as runner any person who has been issued runner's license. Each bail bondsman must, on or before July 1 of each year, furnish to the Commissioner a list of all runners appointed by him. Each such bail bondsman who shall, subsequent to the filing of this list, appoint additional persons as runners shall file written notice with the Commissioner of such appointment.

A bail bondsman terminating the appointment of a runner shall file written notice thereof with the Commissioner, together with a statement that he has given or mailed notice to the runner. Such notice filed with the Commissioner shall state the reasons, if any, for such termination. Information so furnished the Commissioner shall be privileged and shall not be used as evidence in any action against the bail bondsman. (1963, c. 1225, s. 26; 1975, c. 619, s. 1.)

§ 85C-27. Substituting bail by sureties for deposit. — If money or bonds have been deposited, bail by sureties may be substituted therefor at any time before a breach of the undertaking, and the official taking the new bail shall make an order that the money or bonds be refunded to the person depositing the same and they shall be refunded accordingly, and the original undertakings shall be canceled. (1963, c. 1225, s. 27; 1975, c. 619, s. 1.)

§ 85C-28. Deposit for defendant admitted to bail authorizes release and cancellation of undertaking. — When the defendant has been admitted to bail, he, or another in his behalf, may deposit with an official authorized to take bail, a sum of money, or nonregistered bonds of the United States, or of the State, or of any county, city or town within the State, equal in market value to the amount of such bail, together with his personal undertaking, and an undertaking of such other person, if the money or bonds are deposited by another. Upon delivery to the official in whose custody the defendant is of a certificate of such deposit, he shall be discharged from custody in the cause.

When bail other than a deposit of money or bonds has been given, the defendant or the surety may, at any time before a breach of the undertaking, deposit the sum mentioned in the undertaking, and upon such deposit being made, accompanied by a new undertaking, the original undertaking shall be canceled. (1963, c. 1225, s. 28; 1975, c. 619, s. 1.)

§ 85C-29. Registration of licenses and power of appointments by insurers. — No professional bail bondsman shall become a surety on an undertaking unless he has registered his current license in the office of the clerk of superior court in the county in which he resides and a certified copy of the same with the clerk of superior court in any other county in which he shall write bail bonds.

A surety bondsman shall also annually register a certified copy of his current power of appointment with the clerk of superior court wherein he resides and in any other county wherein he shall write bail bonds on behalf of an insurer. (1963, c. 1225, s. 31; 1975, c. 619, s. 1.)

§ 85C-30. Financial responsibility of professional bondsmen. — Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair market value of at least one eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than five thousand dollars (\$5,000). (1963, c. 1225, s. 29; 1975, c. 619, s. 1.)

§ 85C-31. Securities held in trust by Commissioner; authority to dispose of same. — The securities deposited by a professional bondsman with the Commissioner shall be held in trust for the sole protection and benefit of the holder of bail bonds executed by or on behalf of the undersigned bondsman in this State. A pro rata portion of the securities shall be returned to the bondsman when the Commissioner is satisfied that the deposit of securities is in excess of the amount required to be maintained with him by said bondsman and all the

securities shall be returned if the Commissioner is satisfied that the bondsman has satisfied, or satisfactory arrangements have been made to satisfy, the obligations of the bondsman on all his bail bonds written in the State. The Commissioner may sell or transfer any and all of said securities or utilize the proceeds thereof for the purpose of satisfying the liabilities of the professional bondsman on bail bonds given in this State on which he is liable. (1975, c. 619, s. 1.)

§ 85C-32. Bondsman to furnish power of attorney with securities. — With the securities deposited with the Commissioner, the professional bondsman shall at the same time deliver to the Commissioner of Insurance a power of attorney, on a form supplied by the Commissioner, executed and acknowledged by the professional bondsman authorizing the sale or transfer of said securities or any part thereof. The power of attorney shall read as follows:

POWER OF ATTORNEY

AUTHORIZING THE COMMISSIONER OF INSURANCE TO SELL,
OR TRANSFER SECURITIES DEPOSITED BY PROFESSIONAL
BONDSMEN IN NORTH CAROLINA.

KNOW ALL MEN BY THESE PRESENTS, That, a professional bondsman, located in the County of, in the State of, has authorized and appointed for himself, his successors, heirs and assigns, the Commissioner of Insurance of the State of North Carolina, in the name and in behalf of said professional bondsman, his true and lawful attorney to sell or transfer any securities deposited or that may be deposited, by said professional bondsman with said Commissioner, under the laws and regulations requiring a deposit of securities to be made by professional bondsmen doing business in the State of North Carolina, insofar as the sale or transfer is deemed necessary by the Commissioner of Insurance to pay any liability arising under a bond which purports to be given by the undersigned bondsman in any county in this State and execution has been issued against said bondsman pursuant to a judgment on the bond and the same has not been satisfied. The securities so deposited are to be held in trust by the Commissioner for the sole protection and benefit of the holder of bail bonds executed by, or on behalf of, the undersigned bondsman. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this day of, 19

Professional Bondsman
Before me, a Notary Public in and for the State of personally appeared, a professional bondsman who acknowledged that he executed the foregoing power of attorney.

WITNESS my hand and Notarial Seal, this day of, 19

Notary Public
My Commission Expires:
(1975, c. 619, s. 1.)

§ 85C-33. Security deposit to be maintained. — Any professional bondsman, whose security deposits with the Commissioner are, for any reason, reduced in value below the requirements of this Chapter, shall immediately upon receipt of

a notice of deficiency from the Commissioner of Insurance deposit such additional securities as are necessary to comply with the law. No professional bondsman shall sign, endorse, execute or become surety on any additional bail bonds, or pledge or deposit any cash, check, or other security of any nature in lieu of a bail bond in any county in North Carolina until such time as he has made such additional deposit of securities as shall be required by the notice of deficiency. (1975, c. 619, s. 1.)

§ 85C-34. Monthly report required. — Each professional bail bondsman shall file with the Commissioner of Insurance a written report in form prescribed by the Commissioner regarding all bail bonds on which he is liable as of the first day of each month showing (i) each individual bonded, (ii) the date such bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance. Such report shall be filed on or before the fifteenth day of each month. Within the same time, a copy of this written report must also be filed with the clerk of superior court in any county in which he is obligated on bail bonds. (1975, c. 619, s. 1.)

§ 85C-35. Examinations. — Whenever the Commissioner deems it prudent he shall visit and examine or cause to be visited and examined by some competent person appointed by him for that purpose any professional bail bondsman subject to the provisions of this Chapter. For this purpose the Commissioner or person making the examination shall have free access to all books and papers of the bondsman that relate to his business and to the books and papers kept by any of his agents or runners. (1975, c. 619, s. 1.)

§ 85C-36. Limit on principal amount of bond to be written by professional bondsman. — No professional bondsman shall act as surety on any bail bond whose principal sum is in excess of one fourth of the value of the securities deposited with the Commissioner at that time. (1975, c. 619, s. 1.)

§ 85C-37. Disposition of fees. — Fees collected by the Commissioner pursuant to this Chapter shall be paid into the general fund of the State. (1963, c. 1225, s. 32; 1975, c. 619, s. 1.)

§ 85C-38. Penalties for violations. — Any person, firm, association or corporation violating any of the provisions of this Chapter shall upon conviction for each offense be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. (1963, c. 1225, s. 33; 1975, c. 619, s. 1.)

§ 85C-39. Duplication of regulation forbidden. — No county, city or town in this State shall license or levy a license tax on bail bondsmen nor require such bondsmen to deposit collateral security as a condition for continuing to write bail bonds. (1975, c. 619, s. 1.)

§ 85C-40. Conflicting laws. — Section 41.1 of Chapter 105 of the General Statutes of North Carolina and all laws and clauses of laws in conflict with the provisions of the Chapter are hereby repealed. Provided, however, that in the event of any conflict between the provisions of this Chapter and those of Chapter 15A of the General Statutes of North Carolina, the provisions of Chapter 15A shall control and continue in full force and effect. (1975, c. 619, s. 2.)

§ 85C-41. Application of Chapter. — This Chapter shall not apply to Robeson County or New Hanover County. (1975, c. 619, s. 3.)

Chapter 86.

Barbers.

Sec.

86-5. Period of apprenticeship; affidavit; qualifications for certificate as registered barber.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 86-5. Period of apprenticeship; affidavit; qualifications for certificate as registered barber. — Any person, to practice barbering as a registered barber, must have worked as a registered apprentice for a period of at least 12 months under the direct supervision of a registered barber, and this fact must be demonstrated to the Board of Barber Examiners by the sworn affidavit of three registered barbers, or such other methods of proof as the Board may prescribe and deem necessary. A certificate of registration as a registered barber shall be issued by the Board hereinafter designated, to any person who is qualified under the provisions of this Chapter, or meets the following qualifications:

- (1) Who is qualified under the provisions of G.S. 86-3;
- (2) Who is at least 18 years of age;
- (3) Who passes a satisfactory physical examination as prescribed by said Board;
- (4) Who has practiced as a registered apprentice for a period of 12 months, under the immediate personal supervision of a registered barber; and
- (5) Who has passed a satisfactory examination, conducted by the Board, to determine his fitness to practice barbering, such examination to be so prepared and conducted as to determine whether or not the applicant is possessed of the requisite skill in such trade to properly perform all the duties thereof, including the ability of the applicant in his preparation of tools, shaving, haircutting, and all the duties and services incident thereto, and has sufficient knowledge concerning diseases of the face, skin and scalp to avoid the aggravation and spreading thereof in the practice of said trade. (1929, c. 119, s. 5; 1975, c. 68, ss. 1, 2.)

Editor's Note. — The 1975 amendment substituted "12 months" for "18 months" in the introductory language and in subdivision (4) and

substituted "18 years of age" for "19 years of age" in subdivision (2).

§ 86-21. Refusal, revocation or suspension of certificates or permits.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 86-25. Licensing and regulating barber schools and colleges.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 87.**Contractors.****Article 1.****General Contractors.**

Sec.

87-1. "General contractor" defined; exemptions.

87-9. Compliance with Federal Highway Act, etc.; contracts financed by federal road funds.

87-10. Application for license; examination; certificate; renewal.

87-12. Certificate evidence of license.

Article 3.**Tile Contractors.**

87-28 to 87-38. [Repealed.]

Article 4.**Electrical Contractors.**

87-43.3. Classification of licenses.

Article 6.**Water Well Contractors.**

Sec.

87-70. Board of Water Well Contractor Examiners; creation; composition; appointment and terms of members; vacancies.

Article 7.**North Carolina Well Construction Act.**

87-85. Definitions.

87-91. Notice.

87-92. Hearings.

87-95. Injunctive relief.

ARTICLE 1.***General Contractors.***

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 87-1. "General contractor" defined; exemptions. — For the purpose of this Article, a "general contractor" is defined as one who for a fixed price, commission, fee or wage, undertakes to bid upon or to construct any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars (\$30,000) or more and anyone who shall bid upon or engage in constructing any undertakings or improvements above mentioned in the State of North Carolina costing thirty thousand dollars (\$30,000) or more shall be deemed and held to have engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power plant equipment, radial brick chimneys, and monuments. (1925, c. 318, s. 1; 1931, c. 62, s. 1; 1937, c. 429, s. 1; 1949, c. 936; 1953, c. 810; 1971, c. 246, s. 1; 1975, c. 279, s. 1.)

Editor's Note. — The 1975 amendment substituted "public utilities" for "sewer main" near the middle of the first paragraph.

Where one contracts with a landowner to undertake the construction of a house for the landowner at an agreed price of \$30,000 or more, he is a "general contractor" and subject to the provisions of the licensing statute. *Hickory Furn. Mart, Inc. v. Burns*, 31 N.C. App. 626, 230 S.E.2d 609 (1976).

Cost of Undertaking Is Contract Price. —

It is the cost of the undertaking by the purported contractor that controls. The contract price, or cost of the contractor's undertaking, is not always the same as the total cost of the building. The owner's total cost of the building is not determinative of the contractor's status. *Hickory Furn. Mart, Inc. v. Burns*, 31 N.C. App. 626, 230 S.E.2d 609 (1976).

Unlicensed Person May Not Recover, etc. —

A general contractor within the meaning of this section who has no license or who constructs a project the value of which exceeds the amount of his license may not recover for the owner's breach of the contract, or for the value of the work and services furnished or materials supplied under the contract on the theory of unjust enrichment. *Helms v. Dawkins*, 32 N.C. App. 453, 232 S.E.2d 710 (1977).

But May Assert Claim Against Owner for Breach of Contract Defensively. —

The general contractor may assert any claim he has against the owner for breach of the contract defensively as a set-off to any claim asserted against him by the owner for any breach of the contract by the owner. *Helms v. Dawkins*, 32 N.C. App. 453, 232 S.E.2d 710 (1977).

§ 87-9. Compliance with Federal Highway Act, etc.; contracts financed by federal road funds. — Nothing in this Article shall operate to prevent the Department of Transportation from complying with any act of Congress and any rules and regulations promulgated pursuant thereto for carrying out the provisions of the Federal Highway Act, or shall apply to any person, firm or corporation proposing to submit a bid or enter into contract for any work to be financed in whole or in part with federal aid road funds in such manner as will conflict with any act of Congress or any such rules and regulations promulgated pursuant thereto. (1939, c. 230; 1971, c. 246, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 87-10. Application for license; examination; certificate; renewal. — Anyone hereafter desiring to be licensed as a general contractor in this State shall make and file with the Board, 30 days prior to any regular or special meeting thereof, a written application on such form as may then be by the Board prescribed for examination by the Board, which application shall be accompanied by the sum of eighty dollars (\$80.00) if the application is for an unlimited license, or sixty dollars (\$60.00) if the application is for an intermediate license, or forty dollars (\$40.00) if the application is for a limited license; the holder of an unlimited license shall be entitled to engage in the business of general contracting in North Carolina unlimited as to the value of any single project, the holder of an intermediate license shall be entitled to engage in the practice of general contracting in North Carolina but shall not be entitled to engage therein with respect to any single project of a value in excess of four hundred twenty-five thousand dollars (\$425,000), the holder of a limited license shall be entitled to engage in the practice of general contracting in North Carolina but the holder shall not be entitled to engage therein with respect to any single project of a value in excess of one hundred twenty-five thousand dollars (\$125,000) and the license certificate shall be classified as hereinafter set forth. Before being entitled to an examination an applicant must show to the satisfaction of the Board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability and integrity, and that the applicant has not committed or

done any act, which, if committed or done by any licensed contractor would be grounds under the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this State or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony: Provided, no applicant shall be refused the right to an examination, except in accordance with the provisions of Chapter 150[A] of the General Statutes.

The Board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction and liens. If the results of the examination of applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in said certificate, which may be limited into four classifications as the common use of the terms are known — that is,

- (1) Building contractor;
- (2) Highway contractor;
- (3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:
 - a. Water and sewer mains and water service lines and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations;
 - b. Water and wastewater treatment facilities and appurtenances thereto;
 - c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the customer;
 - d. Public communication distribution facilities; and
 - e. Natural gas and other petroleum products distribution facilities;

provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor qualifies, and

- (4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

Public utilities contractors constructing water service lines and house and building sewer lines as provided in (3)a above shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected.

If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one

or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of 30 days thereafter, and then be canceled, but the applicant shall then be entitled to a reexamination, all pursuant to the rules to be promulgated by the Board: Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this Article.

Anyone failing to pass this examination may be reexamined at any regular meeting of the Board without additional fee. Certificate of license shall expire on the thirty-first day of December following the issuance or renewal and shall become invalid on that day unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without reexamination, by the payment of a fee to the secretary of the Board of sixty dollars (\$60.00) for unlimited license, forty dollars (\$40.00) for intermediate license and twenty dollars (\$20.00) for limited license. (1925, c. 318, s. 9; 1931, c. 62, s. 2; 1937, c. 328; c. 429, s. 3; 1941, c. 257, s. 1; 1953, c. 805, s. 2; c. 1041, s. 3; 1971, c. 246, s. 3; 1973, c. 1036, ss. 1, 2; c. 1331, s. 3; 1975, c. 279, ss. 2, 3.)

Editor's Note. —

The 1975 amendment added to subdivision (3) of the second paragraph all of the language following "Public utilities contractors" at the beginning of the subdivision and preceding "and" at the end of the subdivision. The amendment also added the third paragraph of the section.

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

The purpose of this section is to protect the public from incompetent builders by forbidding them to maintain an action on their contracts, thereby discouraging them from undertaking projects beyond their capabilities. *Hickory Furn. Mart, Inc. v. Burns*, 31 N.C. App. 626, 230 S.E.2d 609 (1976).

Unlicensed Party May Not Maintain Action. —

An unlicensed contractor cannot affirmatively enforce his contract; neither can he recover in quantum meruit, because this would achieve the result forbidden at law. *Hickory Furn. Mart, Inc. v. Burns*, 31 N.C. App. 626, 230 S.E.2d 609 (1976).

But May Enforce Contract Defensively. — Although an unlicensed contractor cannot affirmatively enforce his contract, a general contractor can enforce his contract defensively, as a set-off to the claims asserted against him, though the set-off cannot exceed his adversary's claims. This exception limits the penalty paid by the unlicensed builder to the amount he actually expended on the contract and no more. *Hickory Furn. Mart, Inc. v. Burns*, 31 N.C. App. 626, 230 S.E.2d 609 (1976).

§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 87-12. Certificate evidence of license. — The issuance of a certificate of license or limited license by this Board shall be evidence that the person, firm, or corporation named therein is entitled to all the rights and privileges of a licensed or limited licensed general contractor while said license remains unrevoked or unexpired. A licensed general contractor holding a license which qualifies him for work as described in G.S. 87-10 shall be authorized to perform the said work without any additional occupational license, notwithstanding the provisions of any other occupational licensing statute. A license issued by any other occupational licensing board having jurisdiction over any work described in G.S. 87-10 shall qualify such licensee to perform the work for which the license

qualifies him without obtaining the license from the General Contractors Licensing Board. Nothing contained herein shall operate to relieve any general contractor from the necessity of compliance with other provisions of the law requiring building permits and construction in accordance with appropriate provisions of the North Carolina State Building Code. (1925, c. 318, s. 11; 1937, c. 429, s. 5; 1975, c. 279, s. 4.)

Editor's Note. — The 1975 amendment added all of the section following the first sentence.

ARTICLE 2.

Plumbing and Heating Contractors.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.

Applicability of Licensing Requirements to Property Owners. — The licensing requirements of Article 2, Chapter 87 for Plumbing Contractors are not applicable to a property owner who installs pipe from an

existing well to a mobile home connection point and sewage lines from a mobile home connection point to an existing septic tank facility. Opinion of Attorney General to Honorable W.G. Smith, 45 N.C.A.G. 176 (1975).

§ 87-23. Revocation or suspension of license for cause.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 3.

Tile Contractors.

§§ 87-28 to 87-38: Repealed by Session Laws 1977, c. 143.

Editor's Note. — This Article was also repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2.

ARTICLE 4.

Electrical Contractors.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 87-43.3. Classification of licenses. — An electrical contractor's license shall be issued in one of the following classifications: *Limited*, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of ten thousand dollars (\$10,000) and on which the equipment or installation in the contract is rated at not more than 600 volts; *Intermediate*, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of fifty thousand dollars (\$50,000); *Unlimited*, under which a licensee shall be permitted to engage in any electrical contracting project regardless of value; and such other special *Restricted* classification as the Board may establish from time to time to provide for the licensing of persons, firms or corporations wishing to engage in special restricted electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited nature; and for the licensing of persons, firms or corporations wishing to engage in electrical contracting work as an incidental part of their primary business, which is a lawful business other than electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited nature directly in connection with said primary business. The Board may establish appropriate standards for each classification, such standards not to be inconsistent with the provisions of G.S. 87-42. (1969, c. 669, s. 1; 1973, c. 1228, s. 1; 1975, c. 29.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, increased the maximum project value for a "Limited" license from \$5,000 to \$10,000.

§ 87-47. Jurisdiction of Board over licensees.**Editor's Note.** —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 5.

Refrigeration Contractors.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 87-59. Revocation or suspension of license for cause.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 6.

Water Well Contractors.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 87-70. Board of Water Well Contractor Examiners; creation; composition; appointment and terms of members; vacancies. — There is hereby created a State Board of Water Well Contractor Examiners consisting of seven persons to be appointed by the Governor. Four of the members of said Board are to be water well contractors; one is to be an employee of the Department of Natural Resources and Community Development; one is to be an employee of the Department of Human Resources; and, one is to be a person to represent the interests of the public at large, and such appointee shall not be a water well contractor or an employee thereof or a member or employee of any State department. Prior to January 1, 1962, the Governor shall appoint two water well contractors for a term of one year; an employee of the Department of Human Resources and a person representing the public at large for a term of two years; and, two water well contractors and an employee of the Department

of Natural Resources and Community Development for a term of three years. Thereafter, as the term of an appointed member expires, or as a vacancy in the appointed membership occurs for any reason, the Governor shall appoint a successor for a term of three years, or for the remainder of the unexpired term, as the case may be.

The water well contractors appointed by the Governor must be licensed under the provisions of this Article; provided, however, that this requirement shall not apply to members of the original board during their initial terms of office. (1961, c. 997, s. 6; 1973, c. 476, s. 128; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in the second sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 87-80. Procedure when Board refuses to examine applicant or revokes or suspends certificate.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 7.

North Carolina Well Construction Act.

§ 87-85. Definitions. — As used in this Article, unless the context otherwise requires:

(5a) "Department" means the Department of Natural Resources and Community Development unless otherwise indicated. (1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (5a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (5a) are set out.

§ 87-91. Notice.

(b) Such notice shall be served on the person by sending the same to such person by registered or certified mail to his last known post-office address or by personal service by an agent or employee of the Department of Natural Resources and Community Development, and may be accompanied by an order of the Environmental Management Commission requiring described remedial action, which if taken within the time specified in such order, will effect compliance with the requirements of this Article and the rules and regulations issued hereunder. Such order shall become final unless a request for a hearing as hereinafter provided is made within 30 days from the date of service of such order. In addition to, or in lieu of such order, the Environmental Management Commission may appoint a time and place for such person to be heard. Notice by the Environmental Management Commission or Department may be given to any person upon whom a summons may be served in accordance with the

provisions of law governing civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice. (1967, c. 1157, s. 9; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As subsection (a) was not changed by the amendment, it is not set out.

§ 87-92. Hearings. — The following provisions, together with any additional provisions not inconsistent herewith which the Environmental Management Commission may prescribe, shall be applicable in connection with hearings pursuant to this Article, except where other provisions are applicable in connection with specific types of hearings.

- (3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Department of Natural Resources and Community Development or by any other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Department of Natural Resources and Community Development.
- (5) The Department of Natural Resources and Community Development, or the duly authorized agents of the said Department of Natural Resources and Community Development, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.
- (11) As previously recited above, the Environmental Management Commission shall have the authority to adopt a seal which shall be the seal of said Environmental Management Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Environmental Management Commission or its minutes may be certified by the Secretary of Natural Resources and Community Development under his hand and the seal of the Environmental Management Commission and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Environmental Management Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Environmental Management Commission or by any other person or interested party where material, relevant and competent. (1967, c. 1157, s. 10; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in subdivisions (3) and (5) and in the second sentence of subdivision (11).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendment only the introductory paragraph and subdivisions (3), (5) and (11) are set out.

§ 87-95. Injunctive relief. — Upon violation of any of the provisions of or any order issued pursuant to this Article, or duly adopted regulation of the

Commission implementing the provisions of this Article, the Secretary of the Department of Natural Resources and Community Development may, either before or after the institution of proceedings for the collection of the penalty imposed by this Article for such violations, request the Attorney General to institute a civil action in the superior court in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same. (1967, c. 1157, s. 13; 1973, c. 1262, s. 23; 1975, c. 842, s. 1; 1977, c. 771, s. 4.)

Editor's Note. —

The 1975 amendment rewrote this section.

The 1977 amendment substituted "Natural Resources and Community Development" for

"Natural and Economic Resources" in two places in the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Chapter 88.

Cosmetic Art.

Sec.	Sec.
88-1. Practice of cosmetology regulated; permits for operation of cosmetic art shops.	88-17. Regular and special meetings of Board; examinations.
88-12. Qualifications for registered cosmetologist.	88-21. Fees required.
88-13. State Board of Cosmetic Art Examiners created; appointment and qualifications of members; term of office; removal for cause.	88-23. Rules and regulations of Board; inspections; granting of certificates to Board members; employment of former Board members.
88-14. Office in Raleigh; seal; officers and secretary.	88-25. Annual renewal of certificates and permits.
88-15. Compensation and expenses of Board members; inspectors; reports; budget; audit.	88-28. Acts made misdemeanors.
	88-28.1. Restraining orders against persons engaging in illegal practices.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 88-1. Practice of cosmetology regulated; permits for operation of cosmetic art shops. — On and after June 30, 1933, no person or combination of persons shall, for pay or reward, either directly or indirectly, practice or attempt to practice cosmetic art as hereinafter defined in the State of North Carolina without a certificate of registration, either as a registered apprentice or as a registered "cosmetologist," issued pursuant to the provisions of this Chapter by the State Board of Cosmetic Art Examiners hereinafter established.

The operator of a cosmetic art shop, beauty parlor or hairdressing establishment may employ unlicensed personnel to do shampooing only, where the shampooing is done under the supervision of a registered cosmetologist. As used in this paragraph, "shampooing" includes only the application of shampoo to hair and the removal of the shampoo from the hair, and does not include any arranging, dressing, waving, marcelling or other treatment of hair. This paragraph does not apply to barbershops. This paragraph shall not apply to the following counties: Duplin, Durham, Guilford, Jones, Lenoir, Mecklenburg, Onslow, Randolph, Richmond, Sampson, Scotland.

On and after February 1, 1976, any person, firm or corporation, before establishing or opening a cosmetic art shop not heretofore licensed by the State Board of Cosmetic Art, shall make application to the Board, on forms to be furnished by the Board, for a permit to operate a cosmetic art shop. The shop of such applicant shall be inspected and approved by the State Board of Cosmetic

Art by an agent designated for such purpose by the Board before such cosmetic art shop shall be opened for business. It shall be unlawful to open a new cosmetic art shop for the practice of cosmetology until such shop has been inspected, as heretofore required, and determined by the Board to be in compliance with the requirements set forth in this Chapter. Upon the determination by the Board that the applicant has complied with the requirements of this Chapter, the Board shall issue to such applicant a permit to operate a cosmetic art shop. A fee of twenty-five dollars (\$25.00) shall be paid to the Board for the inspection of a cosmetic art shop. Such fee must accompany the application for a permit to operate a cosmetic art shop at the time such application is filed with the Board.

All cosmetic art shops in operation as of February 1, 1976, shall be required to make application to the Board of Cosmetic Art, on forms supplied by the Board, for a permit to operate. The fee required for such permit shall be three dollars (\$3.00) per active booth in said shop.

Thereafter, all permits shall be renewed as of the first day of February of each and every year, and the fee for annual renewal of cosmetic art shop permits shall be as set forth in G.S. 88-21. No permit or certificate shall be transferable. Each cosmetic art shop permit shall be conspicuously posted within such cosmetic art shop for which same is issued. (1933, c. 179, s. 1; 1973, c. 1481, ss. 1, 2; 1975, c. 7; c. 857, s. 1; 1977, cc. 155, 472.)

Editor's Note. —

The first 1975 amendment deleted Halifax and Martin from the list of counties in the fourth sentence of the second paragraph.

The second 1975 amendment, effective July 1, 1975, added the last three paragraphs.

The first 1977 amendment deleted Cumberland, Forsyth, Stanly and Union from

the list of counties in the fourth sentence of the second paragraph.

The second 1977 amendment added Randolph to the list of counties in the fourth sentence of the second paragraph.

§ 88-12. Qualifications for registered cosmetologist. — A certificate of registration as a registered cosmetologist shall be issued by the Board, hereinafter designated, to any person who is qualified under the provisions of this Chapter, or meets the following qualifications:

- (4) Who has worked as a registered apprentice for a period of at least six months under the direct supervision of a registered managing cosmetologist, and this fact must be demonstrated to the Board of Cosmetic Art Examiners by the sworn affidavit of three registered cosmetologists, or by such other methods of proof as the board may prescribe and deem necessary; or has completed 300 hours of cosmetic art education in a cosmetic art school, public school or post secondary institution (community college or technical institute), college or university approved by the board in addition to the 1,200 hours set out in G.S. 88-10, making a total of 1,500 hours; and

(1977, c. 899, s. 1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, rewrote subdivision (4). Session Laws 1977, c. 899, s. 2, provides: "This act shall become effective July 1, 1977, and shall apply to any student who enrolls in a cosmetic art school or college approved by the Board on or after that date."

As the other subdivisions were not changed by the amendment, only the introductory paragraph and subdivision (4) are set out.

Cited in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

§ 88-13. State Board of Cosmetic Art Examiners created; appointment and qualifications of members; term of office; removal for cause. — A board to be known as the State Board of Cosmetic Art Examiners is hereby established, to consist of three members appointed by the Governor of the State. Each member shall be an experienced cosmetologist, who has followed the practice of all branches of the cosmetic art in the State of North Carolina for at least five years next preceding his or her appointment, and who, during such period of time, and at the time of appointment, shall be free of connection in any manner with any cosmetic art school or college or academy or training school. Certification is required of each person prior to his appointment to the Board.

On July 1, 1977, the Governor shall appoint three members for a term of three years. Thereafter, as the term of any member expires, their successor shall be appointed for a term of three years and shall serve until their successor is appointed and qualified. The Governor, at his option, may remove any member for good cause shown and appoint members to fill unexpired terms. (1933, c. 179, s. 13; 1935, c. 54, s. 2; 1973, c. 1360, s. 1; 1975, c. 857, s. 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "three" for "five" in the first sentence and added the last sentence in the first paragraph and substituted the present first sentence of the second paragraph for the former first sentence of that paragraph, which provided

for staggered terms for the former five-member Board. The amendment also added to the second paragraph a new second sentence, which has not been added to the section as set out above because it duplicated the last sentence of the section.

§ 88-14. Office in Raleigh; seal; officers and secretary. — The Board of Cosmetic Art Examiners shall maintain a suitable office in Raleigh, North Carolina, and shall adopt and use a common seal for the authentication of its orders and records. The Board shall operate under its present structure and composure until July 1, 1977, and thereafter said Board shall elect its own officers and in addition thereto shall employ an executive secretary, who shall not be a member of the Board. The salary of such executive secretary shall be fixed by the State Personnel Department. The secretary shall keep and preserve all the records of the Board, issue all necessary notices and perform such other duties, clerical and otherwise, as may be imposed upon such secretary by said Board of Cosmetic Art Examiners. The secretary is hereby authorized and empowered to collect in the name and on behalf of said Board the fees prescribed by this Chapter and shall turn over to the State Treasurer all funds collected or received under this Chapter, which fund shall be credited to the Board of Cosmetic Art Examiners, and said funds shall be held and expended under the supervision of the Director of the Budget of the State of North Carolina exclusively for the administration and enforcement of the provisions of this Chapter. The said secretary shall, before entering upon the duties of the office, execute a satisfactory bond with a duly licensed surety or other surety approved by the Director of the Budget, said bond to be in the penal sum of not less than ten thousand dollars (\$10,000), and conditioned upon the faithful performance of the duties of the office and the true and correct accounting of all funds received by such secretary by virtue of such office. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. Nothing in this Chapter shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer, derived from fees and fines collected under the provisions of this Chapter and received by the State Treasurer in the manner aforesaid. (1933, c. 179, s. 14; 1943, c. 354, s. 1; 1957, c. 1184, s. 1; 1969, c. 844, s. 4; 1971, c. 355, s. 1; c. 616, ss. 1, 2; 1975, c. 857, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added "The Board shall operate under its present structure and composure until July 1, 1977, and thereafter" at the beginning of the second sentence.

§ 88-15. Compensation and expenses of Board members; inspectors; reports; budget; audit. — Each member of the Board of Cosmetic Art Examiners shall receive compensation for his services and expenses as provided in G.S. 93B-5 but shall be limited to payment for services deemed to be official business of the Board. Official business of the Board deemed to be official business of the Board shall include meetings called by the chairman, supervision or administering of examinations, or investigations or inspections made subject to the regulations cited in the following paragraph. No Board member shall be authorized to attend trade shows or to travel out of the State and no per diem or travel expenses shall be paid for such travel unless said Board member is an officer of the organization holding such meeting.

Said Board, with the approval of the Director of the Budget, shall appoint necessary inspectors who shall be experienced in all branches of cosmetic art. The salaries for such inspectors shall be fixed by the State Personnel Department. The inspectors or agents so appointed shall perform such duties as may be prescribed by the Board. Any inspector appointed under authority of this section or any member of the Board shall have the authority at all reasonable hours to examine cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies or training schools with respect to and in compliance with the provisions of this Chapter. No member of the Board shall exercise this authority on a routine basis but shall do so at the direction of either the Board, the chairman, the executive secretary or the inspector assigned to the territory, such direction to be governed by a complaint or problem registered with the Board of Cosmetic Art office or when an inspector deems it necessary to call in a Board member. Reimbursement for per diem and travel is subject to these provisions. Prior to reimbursement, the requesting Board member must submit a detailed written report to the Board of Cosmetic Art office for the official file. The inspectors and agents appointed under authority of this Chapter shall make such reports to the Board of Cosmetic Art Examiners as said Board may require. The said Board shall, on or before June 1 of each year, submit a budget to the Director of the Budget for the ensuing fiscal year, which shall begin July first of each year. The said budget so submitted shall include all estimated receipts and expenditures for the ensuing fiscal year including the estimated compensation and expenses of Board members. The said budget shall be subject to the approval of the Director of the Budget and no expenditures shall be made unless the same shall have been set up in the budget adopted by the Board of Cosmetic Art Examiners, and approved by the Director of the Budget of the State of North Carolina; that all salaries and expenses in connection with the administration of this Chapter shall be paid upon a warrant drawn on the State Treasurer, said warrants to be drawn by the secretary of the Board and approved by the State Auditor.

The provisions of the Executive Budget Act and the Personnel Act shall fully apply to the administration of this Chapter.

There shall be annually made by the Auditor of the State of North Carolina a full audit and examination of the receipts and disbursements of the State Board of Cosmetic Art Examiners. The State Board shall report annually to the Governor a full statement of receipts and disbursements and also a full statement of its work during the year. (1933, c. 179, s. 15; 1935, c. 54, s. 3; 1941, c. 234, s. 2; 1943, c. 354, s. 2; 1957, c. 1184, s. 2; 1971, c. 355, ss. 2, 3; c. 616, ss. 1, 3; 1973, c. 1360, s. 2; 1975, c. 857, s. 4.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote the first paragraph and added the fifth,

sixth and seventh sentences of the second paragraph.

§ 88-17. Regular and special meetings of Board; examinations. — The Board of Cosmetic Art Examiners shall meet four times a year in the months of January, April, July and October on the first Tuesday in each of said months, for the purpose of transacting all business of the Board of Cosmetic Art Examiners and to conduct examinations of applicants for certificates of registration to practice as registered cosmetologists, and of applicants for certificates of registration to practice as registered apprentices, meetings to be held at such places as the Board may determine to be most convenient for such examinations; provided, however, that examinations are conducted at no less than three locations other than Raleigh, scattered geographically throughout the State of North Carolina, and the locations for examinations conducted outside of Raleigh shall be in publicly supported two-year post-secondary educational institutions with appropriate facilities. The examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall be open to all applicants, and shall include such practical demonstration and oral and written tests as the said Board may determine and the examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall be administered by teachers or instructors qualified and approved by the Board of Cosmetic Art Examiners. Examinations held in post-secondary educational institutions shall be supervised by not more than one member of the Board of Cosmetic Art and shall be administered by teachers or instructors, other than Board members, who are qualified and approved by the Board. Examinations held in Raleigh shall be administered by the minimum number of Board members required to conduct such examinations and the chairman of the Board is authorized and empowered to make the decision, based on the number of applicants scheduled for examination, and to appoint such Board members to conduct the scheduled examinations. The chairman of the Board is hereby authorized and empowered to call a meeting of said Board whenever necessary, said meetings to be in addition to the quarterly meetings hereinbefore provided for. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chairman of the Board. (1933, c. 179, s. 17; 1935, c. 54, s. 4; 1973, c. 1360, ss. 3, 4; 1975, c. 857, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted "provided that such examinations are made under the supervision of a member of the Board of Cosmetic Art Examiners" at the end of

the second sentence, deleted the former third sentence, which empowered the chairman to call additional meetings, and added the last four sentences.

§ 88-21. Fees required. — The fee to be paid by an applicant for a certificate of registration to practice cosmetic art as an apprentice shall be five dollars (\$5.00). The fee to be paid by an applicant for examination to determine his or her fitness to receive a certificate of registration as a registered cosmetologist shall be ten dollars (\$10.00). The regular or annual license fee of a registered cosmetologist shall be eight dollars (\$8.00), and the renewal of the license of a registered cosmetologist shall be eight dollars (\$8.00) if renewed before the same becomes delinquent, and if renewed after the same becomes delinquent there shall be charged a penalty of three dollars (\$3.00) in addition to the regular license fee of eight dollars (\$8.00); the annual license fee of a registered

apprentice shall be four dollars (\$4.00), and all licenses, both for apprentices and for registered cosmetologists, shall be renewed as of the first day of October each and every year. All cosmetic art shops in operation shall pay an annual fee of three dollars (\$3.00) for each active booth on or before February 1, if paid before it becomes delinquent, and if renewed after the same becomes delinquent, there shall be charged a penalty of ten dollars (\$10.00) in addition to the regular permit fee. The fee for registration of an expired permit of a cosmetic art shop shall be twenty-five dollars (\$25.00). All cosmetic art schools shall pay a fee of fifty dollars (\$50.00) annually. The fees herein set out shall not be increased by the Board of Cosmetic Art Examiners, but said Board may regulate the payment of said fees and prorate the license fees in such manner as it deems expedient. The fee for registration of an expired certificate for a registered cosmetologist shall be five dollars (\$5.00) and registration of an expired certificate of an apprentice shall be three dollars (\$3.00). (1933, c. 179, s. 21; 1955, c. 1265; 1973, c. 256, s. 2; 1975, c. 857, s. 6.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added the fourth and fifth sentences.

§ 88-23. Rules and regulations of Board; inspections; granting of certificates to Board members; employment of former Board members. — The State Board of Cosmetic Art Examiners shall have authority to make reasonable rules and regulations for the sanitary management of cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies and training schools, hereinafter called shops and schools, and to have such rules and regulations enforced. The duly authorized agents of said Board shall have authority to enter upon and inspect any shop or school at any time during business hours. A copy of the rules and regulations adopted by said Board and approved by the Commission for Health Services shall be furnished from the office of the Board or by the above-mentioned authorized agents to the owner or manager of each shop or school in the State, and such copy shall be kept posted in a conspicuous place in each shop and school.

The Board of Cosmetic Art shall not hereafter be authorized to grant teacher's or instructor's certificates to Board members during their term of appointment on said Board. Teacher's or instructor's certificates granted to members by official action of the Board, without prior examination, shall be rescinded upon such member's termination from the Board of Cosmetic Art.

Any person appointed to the Board of Cosmetic Art shall be prohibited from being employed by the Board for a period of one year after that person's term of appointment expires, whether or not that person served his whole term. (1933, c. 179, s. 23; 1935, c. 54, s. 5; 1973, c. 476, s. 128; 1975, c. 857, s. 9.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added the second and third paragraphs.

§ 88-25. Annual renewal of certificates and permits. — Every registered cosmetologist and every registered apprentice, who continues in active practice or service shall annually, on or before October 1 of each year, renew his, or her certificate of registration which has not been renewed prior to, or during the month of October in any year, and which shall expire on the first day of November in that year. A registered cosmetologist, or a registered apprentice whose certificate of registration has expired may have his or her certificate restored immediately upon payment of the required restoration fee. Any registered cosmetologist who retires from the practice of cosmetic art for not

more than three years may renew his or her certificate of registration upon payment of the required restoration fee, and by paying the license fee for the years that such license fees have not been paid.

Every cosmetic art shop, which continues to operate, shall annually, on or before February 1 of each year, renew its permit to operate, and any permit that has not been renewed before or during the month of February in any year shall expire on the first day of March in that year. A cosmetic art shop whose permit has expired may have its permit restored immediately upon payment of restoration fee, as required in G.S. 88-21, in addition to the renewal fee. (1933, c. 179, s. 25; 1957, c. 1184, s. 4; 1973, c. 256, s. 3; c. 450, s. 3; 1975, c. 857, s. 7.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added the second paragraph.

§ 88-27. Procedure for refusal, suspension or revocation of certificate.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 88-28. Acts made misdemeanors. — Each of the following constitutes a misdemeanor punishable upon conviction by a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100.00), or up to 30 days in jail, or both:

- (1) The violation of any of the provisions of G.S. 88-1.
- (2) Permitting any person in one's employ, supervision, or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.
- (3) Permitting any person in one's employ, supervision, or control, to practice as a cosmetologist unless that person has a certificate as a registered cosmetologist.
- (4) Obtaining, or attempting to obtain, a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.
- (5) Practicing or attempting to practice by fraudulent misrepresentations.
- (6) The willful failure to display a certificate of registration as required by G.S. 88-24.
- (7) The willful violation of the reasonable rules and regulations adopted by the State Board of Cosmetic Art Examiners and approved by the Commission for Health Services. (1933, c. 179, s. 28; 1949, c. 505, s. 2; 1973, c. 476, s. 128; 1975, c. 857, s. 8.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, increased the minimum fine from \$10.00 to \$25.00 and the maximum from \$50.00 to \$100.00

and substituted "or up to 30 days in jail, or both" for "or imprisonment for not less than 10 days, or more than 30 days" in the introductory paragraph.

§ 88-28.1. Restraining orders against persons engaging in illegal practices. — The Department of Human Resources and/or any county, city or district health officer and/or the State Board of Cosmetic Art Examiners, if it shall be found that any licensed cosmetologist, cosmetic art shop, or other person, who is subject to the provisions of this Chapter, is violating any of the rules and regulations adopted by the State Board of Cosmetic Art Examiners, as approved by the Commission for Health Services, or any provisions of Chapter 88, section

28, of the General Statutes of North Carolina [G.S. 88-28], may, after notice to such person of such violation, apply to the superior court for a temporary or permanent restraining order to restrain such person from continuing such illegal practices. If, upon such application, it shall appear to the court that such person has violated and/or is violating any of the said rules and regulations or any provisions of Chapter 88, section 28, of the General Statutes of North Carolina [G.S. 88-28], the court may issue an order restraining any further violations thereof. All such actions for injunctive relief shall be governed by the provisions of Article 37 of Chapter 1 of the General Statutes: Provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under any of the provisions of this Chapter. (1949, c. 505, s. 1; 1973, c. 476, s. 128; 1975, c. 857, s. 10.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, inserted "cosmetic art shop" near the beginning of the first sentence.

Chapter 89.

Engineering and Land Surveying.

§§ 89-1 to 89-16: Recodified as §§ 89C-1 to 89C-28.

Editor's Note. — This Chapter was rewritten by Session Laws 1975, c. 681, s. 1, and has been recodified as Chapter 89C.

Former § 89-8 was amended by Session Laws 1975, c. 19, s. 23, which corrected technical errors in the first 1973 amendatory act.

§ 89B-1. General provisions. — (1) No person shall, in any manner, convey, directly or indirectly, the right to use any land, or any interest therein, without first having been registered as a professional engineer or land surveyor as provided.

(2) It is the intention of this Chapter to improve the standards relative to the practice of engineering and land surveying in this State. (1975, c. 681, s. 1.)

§ 89B-2. Definitions. — As used in this Chapter:

- (1) "Board" shall mean the State Board of Engineering and Land Surveying provided for by this Chapter.
- (2) "Forester" means a person who is engaged in the practice of forestry and training in the management of forest lands, including the application of silvicultural practices, forest management, and forest utilization in accordance with the principles of forestry as hereinafter provided.
- (3) "Practicing" means the performance of any act, service, or function, not limited to, but including, the design, planning, or execution of any forestry activity requiring the application of scientific knowledge and techniques.

Chapter 89A.**Landscape Architects.**

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 89A-7. Refusal, revocation or suspension of certificate.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 89A-8. Violation a misdemeanor; injunction to prevent violation.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 89B.

Foresters.

Sec.	Sec.
89B-1. General provisions.	89B-8. Records and reports.
89B-2. Definitions.	89B-9. General requirements for registration.
89B-3. State Board of Registration for Foresters; appointment of members; terms.	89B-10. Application and registration fees.
89B-4. Compensation and expenses of Board members.	89B-11. Expiration and renewals.
89B-5. Organization and meetings of the Board.	89B-12. Examinations.
89B-6. Powers of the Board.	89B-13. Revocations and reissuance of registration.
89B-7. Receipts and disbursements.	89B-14. Roster of registered foresters.
	89B-15. Violation and penalties.

Editor's Note. — Session Laws 1975, c. 531, s. 16, makes this Chapter effective July 1, 1975.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to

conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 89B-1. General provisions. — (a) No person shall, in connection with his name or otherwise, assume, use or advertise any title or description tending to convey, directly or indirectly, the impression that he is a registered forester without first having been registered as a registered forester as hereinafter provided.

(b) It is the intention of this Chapter to benefit and protect the public by improving the standards relative to the practice of professional forestry in North Carolina. (1975, c. 531, s. 1.)

§ 89B-2. Definitions. — As used in this Chapter:

- (1) "Board" shall mean the State Board of Registration for Foresters, provided for by this Chapter.
- (2) "Forester" means a person who by reason of his special knowledge and training in natural sciences, mathematics, silviculture, forest protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of forestry as hereinafter defined.
- (3) "Practicing" means giving professional forestry services, including but not limited to, consultation, investigation, evaluation, education, planning, or responsible supervision of any forestry activities requiring knowledge, and training in and experience of forestry principles and techniques.

- (4) "Registered forester" means a person who has been registered pursuant to this Chapter. (1975, c. 531, s. 2.)

§ 89B-3. State Board of Registration for Foresters; appointment of members; terms. — (a) A State Board of Registration for Foresters is hereby created whose duty it shall be to administer the provisions of this Chapter. The Board shall consist of four duly practicing registered foresters and one at-large member, who shall be appointed by the Governor for a term of five years. In the initial appointments of foresters, the Governor shall appoint four practicing foresters, at least three of whom shall hold at least a bachelor's degree from an accredited forestry school. The appointments shall have the effect of duly registering the appointees who are practicing foresters. The initial Board shall be appointed for terms of one, two, three, four, and five years respectively beginning July 1, 1975. The members of the Board shall serve for the terms hereinbefore specified and until their successors are duly appointed and qualified. Upon the expiration of the term of any forester Board member, the Governor shall appoint as his successor a practicing registered forester. Upon the expiration of the term of the at-large member, the Governor shall appoint an at-large successor.

(b) Each member of the Board shall be a citizen of the United States and a resident of North Carolina.

(c) Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term.

(d) The Board shall elect annually the following officers: a chairman, and a vice-chairman, who shall be members of the Board, and a secretary who may be a member of the Board. A quorum of the Board shall consist of not less than three voting members of the Board. (1975, c. 531, s. 3.)

§ 89B-4. Compensation and expenses of Board members. — Each member of the Board shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. (1975, c. 531, s. 4.)

§ 89B-5. Organization and meetings of the Board. — The Board shall meet on call of the Governor within 30 days after its initial members are appointed, and thereafter shall hold at least two regular meetings each year. Special meetings may be held at such time and place as the bylaws of the Board may provide. (1975, c. 531, s. 5.)

§ 89B-6. Powers of the Board. — The Board may make all reasonable and necessary rules for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board. (1975, c. 531, s. 6.)

§ 89B-7. Receipts and disbursements. — The secretary of the Board shall receive and account for all moneys derived under the provision of this Chapter, and shall keep such moneys in a separate fund to be known as the "Registered Foresters' Fund." Moneys in the aforesaid fund shall be expended to carry out the purposes of the Board. The secretary of the Board shall give surety bond to the Board in such sum as the Board may determine, the premium of which shall be regarded as a proper expense of the Board and shall be paid from the Registered Foresters' Fund.

The Board may employ and fix the compensation of necessary clerical and other assistants. The compensation of such assistants shall be paid out of the Registered Foresters' Fund. (1975, c. 531, s. 7.)

§ 89B-8. Records and reports. — The Board shall keep a record of its proceedings and a register of all applications for registration. The register shall show the name, age and residence of each applicant; the date of the application; applicant's place of business; his educational and other qualifications; whether or not examination was required; whether application was rejected or registration was granted; date of action by the Board; and other information as may be deemed necessary by the Board. Annually on July 1 the Board shall submit to the Governor a report of its transactions of the preceding year. (1975, c. 531, s. 8.)

§ 89B-9. General requirements for registration. — (a) Applicants for registration shall be registered upon satisfactory showing to the Board that the applicant:

(1) Is of good moral character, and

(2) Has either:

a. Graduated with a bachelor's or higher degree in a forestry curriculum from a school or college of forestry approved by the Board and has had two or more years' experience in forestry; or

b. Passed a written examination designed to show knowledge approximating that obtained through graduation from a four-year curriculum in forestry in a university or college approved by the Board, and has a record of five or more years of active practice in forestry work of a character satisfactory to the Board; provided that five or more years shall be immediately prior to the application; or

c. Is a resident of North Carolina and has engaged in the practice of forestry for five years immediately prior to July 1, 1975, and has held himself out in writing and has been employed as a practicing forester for that period. Such person shall make written application under oath of the Board to be registered on or before June 30, 1976, and thereafter no person shall be registered under this subparagraph.

(b) Registration shall be determined upon the basis of individual personal qualification. No firm, company, partnership, corporation or public agency shall be registered as a registered forester.

(c) A nonresident of North Carolina may become a registered forester under this Chapter by complying with its terms, and by filing a consent as to service of process and pleadings upon the Board secretary. In connection with the practice of forestry by such nonresident in North Carolina, the consent as to service of process and pleadings shall be held binding and valid in all courts, as if due service had been made personally upon said nonresident by the Board, when such process has been served upon the Board secretary.

(d) A person not a resident of North Carolina, or one who has recently become a resident thereof, may become registered under this Chapter upon written application to the Board, provided: (i) Such person is legally registered as a registered forester in his own state or country and has submitted evidence to the Board that he is so registered; and (ii) the state or country in which he is so registered observes these same rules of reciprocity in regard to persons registered under the provisions of this Chapter.

(e) A nonresident of North Carolina may use the term "registered forester" in North Carolina without becoming registered under this Chapter provided that he is registered in another state which will reciprocate with the provision of this Chapter. (1975, c. 531, s. 9.)

§ 89B-10. Application and registration fees. — Applications for registration shall be made on forms prescribed and furnished by the Board. The application

fee for a certificate of registration as a registered forester shall be fifteen dollars (\$15.00), which shall accompany the application. An additional fifteen dollars (\$15.00) shall be paid upon issuance of the certificate of registration. Should the applicant fail or refuse to remit the certificate fee within 30 days after being notified in the usual manner that the applicant has successfully qualified, he forfeits the right to have the certificate so issued and said applicant may be required again to submit an original application fee therefor. Should the Board deny the issuance of a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the Board. (1975, c. 531, s. 10.)

§ 89B-11. Expiration and renewals. — Registrations shall expire on the last day of June following issuance or renewal and shall become invalid after that date unless renewed. It shall be the duty of the secretary of the Board to notify, at his last registered address, every person registered under this Chapter of the date of the expiration of his registration and the amount of fee which shall be required for its renewal for one year. Such notices shall be mailed at least 30 days in advance of the expiration date of such registrations. The annual renewal fee for certificates shall be ten dollars (\$10.00). The fee for issuance of replacement certificates of registration shall be five dollars (\$5.00).

Any registration which has expired may be renewed by paying a fee of ten dollars (\$10.00) plus one dollar (\$1.00) per calendar month from the date of expiration. Charges above the renewal fee shall not exceed twenty dollars (\$20.00). (1975, c. 531, s. 11.)

§ 89B-12. Examinations. — When written examinations are required, they shall be held at such time and places in the State of North Carolina as the Board shall determine. The methods of procedure will be described by the Board. A candidate failing an examination may apply for reexamination at the expiration of six months and will be reexamined with payment of an additional fee of fifteen dollars (\$15.00). Subsequent examinations will be granted upon payment of a fee of fifteen dollars (\$15.00) for each examination. (1975, c. 531, s. 12.)

§ 89B-13. Revocations and reissuance of registration. — The Board shall have the power to revoke or suspend the certificate of registration of any registrant who is found, by the Board, to be guilty of gross negligence, fraud, deceit or flagrant misconduct in the practice of forestry, or who is found by the Board to have demonstrated incompetence as a practicing forester. The Board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct in connection with any forestry practice against any registrant that may come to its attention.

Any person may prefer charges against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the Board. The time and place for a hearing before the Board shall be fixed by the Board. At any hearing the accused may appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended. (1975, c. 531, s. 13.)

§ 89B-14. Roster of registered foresters. — A roster showing the names, registration numbers, and places of business residence of all registered foresters qualified according to the provisions of this Chapter shall be prepared by the secretary of the Board during the month of July of each year. Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each

registrant, and copies may be furnished to the public upon request and upon payment of a fee to be set by the Board. (1975, c. 531, s. 14.)

§ 89B-15. Violation and penalties. — Any person who, without being registered in accordance with the provisions of this Chapter, shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester; or any person who shall give any false or forged information of any kind to the Board or to any member thereof in obtaining a certificate of registration; or any person, firm, partnership or corporation who shall violate any of the provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars (\$50.00), or imprisoned not more than 30 days. (1975, c. 531, s. 15.)

Chapter 89C.

Engineering and Land Surveying.

Sec.	Sec.
89C-1. Short title.	89C-17. Expirations and renewals of certificates.
89C-2. Declarations; prohibitions.	89C-18. Reissuance of certificates.
89C-3. Definitions.	89C-19. Public works; requirements where public safety involved.
89C-4. State Board of Registration; appointments; terms.	89C-20. Rules of professional conduct.
89C-5. Board members; qualifications.	89C-21. Disciplinary action — reexamination, revocation, suspension, reprimand, or fine.
89C-6. Compensation and expenses of Board members.	89C-22. Disciplinary action — charges; procedure.
89C-7. Vacancies; removal of member.	89C-23. Unlawful to practice engineering or land surveying without registration; unlawful use of title or terms; penalties; Attorney General to be legal adviser.
89C-8. Organization of the Board; meetings; election of officers.	89C-24. Corporate or partnership practice of engineering or land surveying.
89C-9. Executive secretary; duties and liabilities.	89C-25. Limitations on application of Chapter.
89C-10. Board powers.	89C-26. Duties of register of deeds.
89C-11. Secretary; duties and liabilities; expenditures.	89C-27. Invalid sections; severability.
89C-12. Records and reports of Board; evidence.	89C-28. Existing registration not affected.
89C-13. General requirements for registration.	
89C-14. Application for registration; registration fees.	
89C-15. Examinations.	
89C-16. Certificates of registration; effect; seals.	

Editor's Note. — This Chapter is Chapter 89 as rewritten by Session Laws 1975, c. 681, s. 1, and recodified. Where appropriate, the historical citations to the sections in the former Chapter have been added to corresponding sections in the new Chapter.

Session Laws 1975, c. 681, s. 2, provides: "All laws and clauses of law in conflict with this act are repealed. Nothing herein, however, shall be construed to repeal any of the provisions of Chapters 150, 150A or 93B of the General Statutes."

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1979, by Session Laws

1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 89C-1. Short title. — This Chapter shall be known and may be cited as "The North Carolina Engineering and Land Surveying Act." (1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

§ 89C-2. Declarations; prohibitions. — In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with his name or otherwise

assume or advertise any title or description tending to convey the impression that he is either a professional engineer or a registered land surveyor, unless such person has been duly registered as such. The right to engage in the practice of engineering or land surveying shall be deemed a personal right, based on the qualifications of the individual as evidenced by his certificate of registration, which shall not be transferable. (1921, c. 1, s. 1; C. S., s. 6055(b); 1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

Legislative Intent. — The Chapter, when read as a whole, makes it clear that the legislature's intent in the "representation," "conveying" and "holding out" provisions of the Chapter was to protect the public from misrepresentations of professional status or expertise. *North Carolina State Bd. of Registration v. IBM Corp.*, 31 N.C. App. 599, 230 S.E.2d 552 (1976).

This Section and § 89C-23 Must Be Read Together. — Section 89C-23, the part of the Chapter prescribing penalties, must be read subject to the basic prohibitory section of the Chapter, this section, which makes it unlawful "to use in connection with his name or otherwise or advertise any title or description tending to convey the impression that he is ... a professional engineer ... unless such person has

been duly registered as such." *North Carolina State Bd. of Registration v. IBM Corp.*, 31 N.C. App. 599, 230 S.E.2d 552 (1976).

This section and § 89C-23 authorize the Board to prohibit only those uses of the title engineer which imply or represent professional engineering status or expertise. *North Carolina State Bd. of Registration v. IBM Corp.*, 31 N.C. App. 599, 230 S.E.2d 552 (1976).

The mere use of the term "Customer Engineer" on business cards and in a newspaper article does not constitute the offering to practice engineering or the representation of professional engineering status or expertise in violation of this section. *North Carolina State Bd. of Registration v. IBM Corp.*, 31 N.C. App. 599, 230 S.E.2d 552 (1976).

§ 89C-3. Definitions. — When used in this Chapter, unless the context otherwise requires:

- (1) "Board" shall mean the North Carolina State Board of Registration for Professional Engineers and Land Surveyors provided for by this Chapter.
- (2) "Engineer". — The term "engineer," within the intent of this Chapter, shall mean a person who, by reason of his special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.
- (3) "Engineer-in-Training". — The term "engineer-in-training," as used in this Chapter, shall mean a person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.
- (4) "Land Surveyor-in-Training". — The term "land surveyor-in-training," as used in this Chapter, shall mean a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.
- (5) "Person" means any natural person, firm, partnership, corporation or other legal entity.
- (6) "Practice of Engineering". —
 - a. The term, "practice of engineering," within the intent of this Chapter, shall mean any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring

compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer or that he is registered under this Chapter; or who holds himself out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

- b. The term "practice of engineering" shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance.
- (7) "Practice of land surveying" by registered land surveyors shall mean any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.
 - a. The term "practice of land surveying" shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.
- (8) "Professional Engineer". — The term, "professional engineer," as used in this Chapter, shall mean a person who has been duly registered and licensed as a professional engineer by the Board established by this Chapter.
- (9) "Registered land surveyor" shall mean a person who, by reason of his special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, as herein defined, as attested by his registration as a registered land surveyor by the Board.
- (10) "Responsible Charge". — This term means direct control and personal supervision, either of engineering work or of land surveying, as the case may be. (1951, c. 1084, s. 1; 1953, c. 999, s. 1; 1973, c. 449; 1975, c. 681, s. 1.)

Use of Word "Engineer" Does Not Represent Professional Engineering Status. —

It is clear from the definition in subdivision (8) that the use of the word "engineer" without being modified by "professional," "registered" or "licensed," or some word of like import does not represent that one is "duly registered and licensed by the Board" and therefore cannot represent that one is a professional engineer as that term is defined in subdivision (8). Since such usage does not represent professional

engineering status, it cannot constitute the practice of engineering as that term is defined in paragraph (6)a. North Carolina State Bd. of Registration v. IBM Corp., 31 N.C. App. 599, 230 S.E.2d 552 (1976).

Therefore, such usage is not a violation of those provisions of this section and § 89C-23 which prohibit the practice or offer to practice engineering without proper registration. North Carolina State Bd. of Registration v. IBM Corp., 31 N.C. App. 599, 230 S.E.2d 552 (1976).

§ 89C-4. State Board of Registration; appointments; terms. — A State Board of Registration for Professional Engineers and Land Surveyors, whose duty it shall be to administer the provisions of this Chapter, is hereby created. The Board shall consist of four professional engineers and three registered land surveyors who shall be appointed by the Governor. No more than one of the land surveyor members shall hold dual registration as a registered land surveyor and a professional engineer. Appointments shall preferably, but not necessarily, be selected from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State his written oath or affirmation for the faithful discharge of his duties. Notwithstanding any provision of this Chapter, the present members of the Board shall continue in office as members of the Board until their present terms expire. Appointments to the Board shall be in such a manner that the terms of the several members will continue to expire at differing times. On the expiration of the term of any member, the Governor shall, in the manner provided herein, appoint for a term of five years a professional engineer or land surveyor having the qualifications required by G.S. 89C-5. A member may be appointed for no more than two full terms. Each member shall hold office until the expiration of the term for which appointed or until his successor has been duly appointed and qualified. If a vacancy on the Board, due to resignation, death or any other cause, results in an unexpired term, and such vacancy is not filled within 90 days, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. Provided, such provisional member shall have all the power and duties of a regularly appointed member of the Board pending the appointment by the Governor. (1921, c. 1, ss. 3-6; C. S., ss. 6055(d)-6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843; 1965, c. 940; 1975, c. 681, s. 1.)

Stated in North Carolina State Bd. of Registration v. IBM Corp., 31 N.C. App. 599, 230 S.E.2d 552 (1976).

§ 89C-5. Board members; qualifications. — Each engineer member of the Board shall be a citizen of the United States, shall be a resident of North Carolina and shall be a registered professional engineer engaged in the lawful practice of engineering in North Carolina for at least two years.

Each land surveyor member of the Board shall be a citizen of the United States, shall be a resident of North Carolina and shall be a registered land surveyor engaged in the lawful practice of land surveying in North Carolina for at least two years. (1921, c. 1, ss. 3-6; C. S., ss. 6055(d)-6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843; 1965, c. 940; 1975, c. 681, s. 1.)

§ 89C-6. Compensation and expenses of Board members. — Each member of the Board, when attending to the work of the Board or any of its committees,

shall receive as compensation for his service the per diem and, in addition thereto, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of his office. (1921, c. 1, ss. 3-6; C. S., ss. 6055(d)-6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843; 1965, c. 940; 1975, c. 681, s. 1.)

§ 89C-7. Vacancies; removal of member. — The Governor may remove any member of the Board for misconduct, incompetency, neglect of duty, or any sufficient cause, in the manner prescribed by law for removal of State officials. Vacancies in the membership of the Board shall be filled for the unexpired term by appointment by the Governor as provided in G.S. 89C-4. (1921, c. 1, ss. 3-6; C. S., ss. 6055(d)-6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843; 1965, c. 940; 1975, c. 681, s. 1.)

§ 89C-8. Organization of the Board; meetings; election of officers. — The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a chairman, a vice-chairman, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order. (1921, c. 1, ss. 3-6; C. S., ss. 6055(d)-6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843; 1965, c. 940; 1975, c. 681, s. 1.)

§ 89C-9. Executive secretary; duties and liabilities. — The Board shall employ an executive secretary who is not a member of the Board. The executive secretary shall be a full-time employee of the Board and perform such duties assigned to him by the secretary subject to the approval of the Board. The executive secretary shall receive a salary and compensation fixed by the Board. The executive secretary shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of his duties. The premium on said bond shall be a necessary and proper expense of the Board. (1921, c. 1, ss. 3-6; C. S., ss. 6055(d)-6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843; 1965, c. 940; 1975, c. 681, s. 1.)

§ 89C-10. Board powers. — (a) The Board shall have the power to adopt and amend all rules and regulations. Additionally, the Board shall have the power to adopt such rules, rules of procedure, and regulations, as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the giving of examinations and the conduct thereof, and the power to enforce such rules of professional conduct as may, from time to time, be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified above shall be binding upon all persons registered under this Chapter, including corporations holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board is hereby authorized in the name of the State to apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for registration to such examination as it deems necessary to determine his qualifications.

(e) The Board shall have the power to issue an appropriate certificate of registration to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no such funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and thereafter sit in deciding on any matter which may directly involve punitive action under such testimony.

(g) The Board is authorized and empowered to use its funds to establish and conduct instructional programs for persons who are currently registered to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for registration to practice engineering or land surveying. The Board may expend its funds for these purposes and is authorized and empowered not only to conduct, sponsor, and arrange for instructional programs, but also to carry out such programs through extension courses or other media, and the Board may enter into plans or agreements with community colleges, institutions of higher learning, both public and private, State and county boards of education, or with the governing authority of any industrial education center for the purpose of planning, scheduling or arranging such courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. For the purpose of carrying out these objectives, the Board is authorized to make and promulgate such rules and regulations as may be necessary for such educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions. (1921, c. 1, ss. 3-6; C. S., ss. 6055(d)-6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843; 1965, c. 940; 1975, c. 681, s. 1.)

§ 89C-11. Secretary; duties and liabilities; expenditures. — The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as "Fund of the Board of Registration for Professional Engineers and Land Surveyors" and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of said fund on the warrant signed by the secretary of the Board; provided, however, that at no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of Registration for Professional Engineers and Land Surveyors, conditioned upon the faithful performance of his duties. The premium on said bond shall be regarded as a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive secretary certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board. (1921, c. 1, s. 7; C. S., s. 6055(h); 1951, c. 1084, s. 1; 1959, c. 617; 1975, c. 681, s. 1.)

§ 89C-12. Records and reports of Board; evidence. — The Board shall keep a record of its proceedings and a register of all applicants for registration, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of registration granted, and the date of such action. The books and register of the Board shall be prima facie evidence of all matters recorded therein, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all registered professional engineers and all registered land surveyors shall be prepared by the secretary of the Board current to the month of January of each year; such roster shall be printed by the Board out of the fund of said Board and distributed as set forth in the rules and regulations. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of the receipts and expenditures of the Board, attested by the affidavits of the chairman and the secretary, and a copy of the said roster of registered professional engineers and registered land surveyors. (1921, c. 1, s. 8; C. S., s. 6055(i); 1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

§ 89C-13. General requirements for registration. — (a) Engineer Applicant. — To be eligible for admission to examination for professional engineer an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering only must submit three character references. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of his engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration:

(1) As a professional engineer.

- a. Registration by Comity or Endorsement. — A person holding a certificate of registration to engage in the practice of engineering, on the basis of comparable qualifications, issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be registered without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of Engineering Examiners, whose qualifications meet the requirements of this Chapter, may upon application, be registered without further examination.

- b. E.I.T. Certificate, Experience, and Examination. — A holder of a certificate of engineer-in-training issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.
- c. Graduation, Experience, and Examination. — A graduate of an engineering curriculum of four years or more approved by the

Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.

d. Graduation, Experience, and Examination. — A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.

e. Long-Established Practice. — An individual with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to an eight-hour written examination in the principles and practice of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work executed by him and which he personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an engineer-in-training.

a. Graduation and Examination. — A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, shall be admitted to an eight-hour written examination in the fundamentals of engineering. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an engineer-in-training, if he is otherwise qualified.

b. Graduation, Experience, and Examination. — A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to an eight-hour written examination in the fundamentals of engineering. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an engineer-in-training if he is otherwise qualified.

(b) Land Surveyor Applicant. — To be eligible for admission to examination for land surveyor-in-training, or registered land surveyor, an applicant must be of good character and reputation and shall submit five references with his application for registration as a land surveyor, two of which references shall be registered land surveyors having personal knowledge of his land surveying experience, or in the case of an application for certification as a land surveyor-in-training by three references, one of which shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of his education, technical and land surveying experience, exhibits of land surveying projects with which he has been associated, recommendations by references, and reviewing of these categories during an oral examination. The land surveyor applicant's qualifications may be reviewed at an interview if the Board deems it necessary. Educational credit for institute courses, correspondence courses, etc., shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for registration as a land surveyor or for certification as a land surveyor-in-training, respectively:

(1) As a registered land surveyor.

a. Rightful possession of a B.S. degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of one year or more of progressive practical experience one year of which shall have been under a practicing registered land surveyor and satisfactorily passing such oral and written examination, taken in the presence of and required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying.

b. Rightful possession of an associate degree in surveying technology or civil engineering technology approved by the Board or with equivalent education and surveying experience satisfactory to the Board, and a record satisfactory to the Board of three years of progressive practical experience, two years of which shall have been under a practicing registered land surveyor, and satisfactorily passing such written and oral examination taken in the presence of and as required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. Anyone who, on or before September 1, 1976, possessed an associate degree in surveying technology, previously approved by the Board, may be considered for examination with two years of experience which shall have been under a practicing registered land surveyor.

c. Land Surveyor-in-Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of six years of progressive practical experience, four years of which shall have been under a practicing registered land surveyor, and

satisfactorily passing such oral and written examination written in the presence of and required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying.

- e. The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by him under proper supervision and which he has personally accomplished or supervised.
- f. Registration by Comity or Endorsement. — A person holding a certificate of registration to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, he may be asked to take such examinations as the Board deems necessary to determine his qualifications, but in any event he shall be required to pass a written examination of not less than four hours' duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.
- g. A licensed professional engineer who can satisfactorily demonstrate to the Board that his formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the two four-hour examinations on the principles and practices of land surveying. Upon satisfactorily passing the examinations, the applicant will be granted a license to practice land surveying in the State of North Carolina.
- h. Professional Engineers in Land Surveying. — Any person presently licensed to practice professional engineering under this Chapter shall upon his application be licensed to practice land surveying, providing his written application is filed with the Board within one year next after June 19, 1975.

(2) As a land surveyor-in-training:

- a. Rightful possession of an associate degree in surveying technology approved by the Board or with equivalent education and surveying experience satisfactory to the Board, and a record satisfactory to the Board of one year of progressive practical experience under a practicing registered land surveyor, and satisfactorily passing such written and oral examination taken in the presence of and as required by the Board.
- b. Rightful possession of a B.S. degree in surveying or other equivalent curricula in surveying, all approved by the Board and satisfactorily passing such oral and written examination written in the presence of and required by the Board.
- c. The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by him under proper supervision and which he has personally accomplished or supervised. (1921, c. 1, s. 9; C. S., s. 6055(j); 1951, c. 1084, s. 1; 1953, c. 999, s. 2; 1957, c. 1060, ss. 2, 3; 1975, c. 681, s. 1.)

Requirement for Obtaining of License as Land Surveyor by Professional Engineer. — Subsection (b)(1)h, as enacted in 1975, does not require that a person theretofore licensed as a professional engineer show that he had actually engaged in the practice of, or that he had

experience in, land surveying as a condition to obtaining a license as a registered land surveyor. *Loughlin v. North Carolina State Bd. of Registration*, 32 N.C. App. 351, 232 S.E.2d 219 (1977).

§ 89C-14. Application for registration; registration fees. — (a) Application for registration as a professional engineer or registered land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom should be members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) The registration fee shall be established by the Board in amounts not to exceed seventy dollars (\$70.00) for an engineer or seventy dollars (\$70.00) for registration as a land surveyor which shall accompany the applications. The fee for comity registration of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation (see G.S. 89C-24) shall be in accordance with Chapter 55B.

(d) Should the Board deny the issuance of a certificate of registration to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination provided the charge for any reexamination shall not exceed twenty dollars (\$20.00).

A candidate failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board. (1921, c. 1, s. 9; C. S., s. 6055(j); 1951, c. 1084, s. 1; 1953, c. 999, s. 2; 1957, c. 1060, ss. 2, 3; 1975, c. 681, s. 1.)

§ 89C-15. Examinations. — (a) The examinations will be held at such times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in G.S. 89C-13, and has been approved by the Board for admission to the examination as follows:

- (1) **Engineering Fundamentals.** — Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the examinee for an engineer-in-training certificate, provided he has met all other requirements for certification required by this Chapter.
- (2) **Principles and Practice of Engineering.** — Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer, provided he has met the other requirements for registration required by this Chapter.
- (3) **Surveying Fundamentals.** — Consists of two four-hour examinations on the elementary disciplines of land surveying. Passing both of these examinations qualifies the examinee for a land surveyor-in-training certificate provided he has met all other requirements for certification required by this Chapter.
- (4) **Principles and Practices of Land Surveying.** — Consists of two four-hour examinations on the basic and applied disciplines of land surveying, one

examination on basic disciplines and the other examination covering applied disciplines. Passing each of these examinations qualifies the examinee for a registered land surveyor certificate provided he has met all other requirements for certification required by this Chapter. (1975, c. 681, s. 1.)

§ 89C-16. Certificates of registration; effect; seals. — (a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of registration giving the registrant proper authority to practice his profession in this State. The certificate of registration for a professional engineer shall carry the designation "professional engineer," and for a land surveyor, "registered land surveyor," shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges and responsibilities of a professional engineer or a registered land surveyor, while the said certificate of registration remains unrevoked or unexpired.

(c) Each registrant hereunder shall upon registration obtain a seal of a design authorized by the Board bearing the registrant's name, serial number, and the legend, "professional engineer," or "registered land surveyor." Final drawings, specifications, plans and reports prepared by a registrant shall, when issued, be certified and stamped with the said seal or facsimile thereof unless the registrant is exempt under the provisions of G.S. 89C-25(g). It shall be unlawful for a registrant to affix, or permit his seal and signature or facsimile thereof to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use his registered land surveyor seal. (1921, c. 1, s. 11; C. S., s. 6055(m); 1951, c. 1084, s. 1; 1957, c. 1060, s. 6; 1975, c. 681, s. 1.)

§ 89C-17. Expirations and renewals of certificates. — Certificates for registration shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the Board to notify by mail every person, registered hereunder, of the date of the expiration of his certificate and the amount of the fee required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of expiration of such certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed fifteen dollars (\$15.00). Failure on the part of any registrant to renew his certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first 36 months immediately following its invalidation of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed. Failure of a registrant to renew his registration for a period of 36 months shall require the individual, prior to resuming practice in North Carolina, to submit an application therefor on the prescribed form, and to meet all other requirements for registration as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all registrants who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may enact rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence

from the State, where the applicant for renewal demonstrates to the Board that he has maintained his active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each registrant to inform the Board promptly concerning change in address. (1921, c. 1, s. 9; C. S., s. 6055(k); 1951, c. 1084, s. 1; 1953, c. 1041, s. 9; 1957, c. 1060, s. 4; 1973, c. 1321; c. 1331, s. 3; 1975, c. 681, s. 1.)

§ 89C-18. Reissuance of certificates. — A new certificate of registration, or certificate of authorization, to replace any certificate lost, destroyed, or mutilated, may be issued, subject to the rules of the Board. A charge of five dollars (\$5.00) shall be made for such issuance. (1921, c. 1, s. 10; C. S., s. 6055(l); 1939, c. 218, s. 2; 1951, c. 1084, s. 1; 1953, c. 1041, s. 10; 1957, c. 1060, s. 5; 1973, c. 1331, s. 3; 1975, c. 681, s. 1.)

§ 89C-19. Public works; requirements where public safety involved. — This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and specifications for engineering projects, or a registered land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in his present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental thereto, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes. (1975, c. 681, s. 1.)

§ 89C-20. Rules of professional conduct. — In the interest of protecting the safety, health, and welfare of the public, the Board shall promulgate and adopt rules of professional conduct applicable to practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of Registration for Professional Engineers and Land Surveyors. The currently effective rules shall be published in the Annual Register. Every person registered by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land surveying. In the case of violation of the rules of professional conduct, the Board shall have the responsibility and duty to proceed in accordance with G.S. 89C-22 and Article 3 of Chapter 150A of the General Statutes. (1975, c. 681, s. 1.)

§ 89C-21. Disciplinary action — reexamination, revocation, suspension, reprimand, or fine. — (a) The Board may suspend, refuse to renew, or revoke the certificate of registration, require reexamination, or levy a fine not in excess of five hundred dollars (\$500.00) for any engineer or land surveyor, who is found:

- (1) Guilty of the practice of any fraud or deceit in obtaining a certificate of registration or certificate of authorization.
- (2) Guilty of any gross negligence, incompetence, or misconduct, in the practice of his profession. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice his profession and to suspend his license during any such period.
- (3) Guilty of any felony or any crime involving moral turpitude.
- (4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.
- (5) To have been declared insane or incompetent by a court of competent jurisdiction and has not thereafter been lawfully declared sane or competent.

(b) The Board shall have the power to (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of registration under the provision of this section. (1921, c. 1, s. 10; C. S., s. 6055(l); 1939, c. 218, s. 2; 1951, c. 1084, s. 1; 1953, c. 1041, s. 10; 1957, c. 1060, s. 5; 1973, c. 1331, s. 3; 1975, c. 681, s. 1.)

§ 89C-22. Disciplinary action — charges; procedure. — (a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any individual registrant or against any corporation holding a certificate of authorization. Such charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary of the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been referred.

(c) If, after such hearing, a majority of the entire Board votes in favor of sustaining the charges, the Board shall reprimand, suspend, refuse to renew, or revoke the individual's certificate of registration, or a corporation's certificate of authorization.

(d) An individual registrant having a certificate of registration, or corporation holding a certificate of authorization, aggrieved by a final decision of the Board, may appeal for judicial review as provided by Article 4 of Chapter 150A.

(e) The Board may, upon petition of an individual or corporation, whose certificate has been revoked, for reasons it may deem sufficient, reissue a certificate of registration or authorization, provided that a majority of the members of the Board vote in favor of such issuance. (1921, c. 1, s. 10; C. S., s. 6055(l); 1939, c. 218, s. 2; 1951, c. 1084, s. 1; 1953, c. 1041, s. 10; 1957, c. 1060, s. 5; 1973, c. 1331, s. 3; 1975, c. 681, s. 1.)

§ 89C-23. Unlawful to practice engineering or land surveying without registration; unlawful use of title or terms; penalties; Attorney General to be legal adviser. — Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being registered in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words "engineer" or "engineering" or "professional engineer" or "professional

engineering" or "land surveyor" or "land surveying," or any modification or derivative thereof in its name or form of business or activity except as registered under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining or attempting to obtain a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of registration, or who shall practice or offer to practice when not qualified, or any person who falsely claims that he is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a misdemeanor, and may, upon conviction, be sentenced to pay a fine [of] not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000), or suffer imprisonment for a period not exceeding three months, or both, in the discretion of the court. In no event shall there be representation of or holding out to the public of any engineering expertise by unregistered persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions thereof to enforce the provisions of this Chapter and to prosecute any persons violating same.

The Attorney General of the State or his assistant shall act as legal adviser to the Board and render such legal assistance as may be necessary in carrying out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses therefor shall be paid from funds of the Board. (1921, c. 1, s. 12; C. S., s. 6055(n); 1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

This Section and § 89C-2 Must Be Read Together. — This section, the part of the Chapter prescribing penalties, must be read subject to the basic prohibitory section of the Chapter, § 89C-2, which makes it unlawful "to use in connection with his name or otherwise or advertise any title or description tending to convey the impression that he is ... a professional engineer ... unless such person has been duly registered as such." *North Carolina State Bd. of Registration v. IBM Corp.*, 31 N.C. App. 599, 230 S.E.2d 552 (1976).

Section 89C-2 and this section authorize the Board to prohibit only those uses of the title engineer which imply or represent professional engineering status or expertise. *North Carolina State Bd. of Registration v. IBM Corp.*, 31 N.C. App. 599, 230 S.E.2d 552 (1976).

Use of Word "Engineer" Does Not Represent Professional Engineering Status. — It is clear from the definition in § 89C-3(8) that the use of the word "engineer" without being

modified by "professional," "registered" or "licensed," or some word of like import does not represent that one is "duly registered and licensed by the Board" and therefore cannot represent that one is a professional engineer as that term is defined in § 89C-3(8). Since such usage does not represent professional engineering status, it cannot constitute the practice of engineering as that term is defined in § 89C-3(6)a. *North Carolina State Bd. of Registration v. IBM Corp.*, 31 N.C. App. 599, 230 S.E.2d 552 (1976).

Therefore, such usage is not a violation of those provisions of § 89C-2 and this section which prohibit the practice or offer to practice engineering without proper registration. *North Carolina State Bd. of Registration v. IBM Corp.*, 31 N.C. App. 599, 230 S.E.2d 552 (1976).

Stated in *Loughlin v. North Carolina State Bd. of Registration*, 32 N.C. App. 351, 232 S.E.2d 219 (1977).

§ 89C-24. Corporate or partnership practice of engineering or land surveying. — A corporation or partnership may engage in the practice of engineering or land surveying in this State; provided, however, the person or persons connected with such corporation or partnership in charge of the designing or supervision which constitutes such practice is or are registered as herein required of professional engineers and registered land surveyors. The same exemptions shall apply to corporations and partnerships as apply to individuals under this Chapter, provided further, that all corporations hereunder

shall be subject to the provisions of Chapter 55B of the General Statutes of North Carolina. (1921, c. 1, s. 14; C. S., s. 6055(p); 1951, c. 1084, s. 1; 1969, c. 718, s. 18; 1975, c. 681, s. 1.)

§ 89C-25. Limitations on application of Chapter. — This Chapter shall not be construed to prevent or affect:

- (1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or
- (2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or
- (3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or
- (4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or supervision; or
- (5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or country; or
- (6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or
- (7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroad[s], or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their

product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

- (8) The performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.
- (9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation. (1921, c. 1, s. 13; C. S., s. 6055(o); 1951, c. 1084, s. 1; 1975, c. 681, s. 1.)

Applied in North Carolina State Bd. of
Registration v. IBM Corp., 31 N.C. App. 599, 230
S.E.2d 552 (1976).

§ 89C-26. Duties of register of deeds. — It shall be unlawful for the recorder of deeds or the register of titles or any county or proper public authority, to file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not have impressed thereon, and affixed thereto, the personal signature and seal of a registered land surveyor by whom, or under whose responsible charge the map, plat, survey, or other documents were prepared. (1975, c. 681, s. 1.)

§ 89C-27. Invalid sections; severability. — If any of the provisions of this Chapter, or if any rule, regulation or order thereunder, or if the application of such provision to any person or circumstance shall be held invalid, the remainder of this Chapter and the application of such provision of this Chapter or rule, regulation or order to persons or circumstances, other than those as to which it is held valid, shall not be affected thereby. (1975, c. 681, s. 1.)

§ 89C-28. Existing registration not affected. — Nothing in this Chapter shall be construed as affecting the status of registration of any professional engineer or registered land surveyor who is rightfully in possession of a certificate of registration duly issued by the Board and valid as of July 1, 1975. (1951, c. 1084, s. 1; 1959, c. 1236, s. 2; 1975, c. 681, s. 1.)

Chapter 89D.

Landscape Contractors.

Sec.		Sec.	
89D-1.	Certificate required.	89D-6.	Registers of applicants and certificate holders.
89D-2.	Definition.	89D-7.	Denial, revocation or suspension of certificate.
89D-3.	Application of Chapter.	89D-8.	Out-of-state applicants.
89D-4.	Landscape Contractors' Registration Board created; membership; compensation; powers, etc.	89D-9.	Persons in practice prior to July 1, 1976.
89D-5.	Application for certificate; examination; renewal.	89D-10.	Injunctions for violation of Chapter.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 89D-1. Certificate required. — On and after December 1, 1975, it shall be unlawful for any person, partnership, association or corporation in this State to use the title "landscape contractor," or to advertise as such without first obtaining a certificate issued by the North Carolina Landscape Contractors' Registration Board under provisions of this Chapter. (1975, c. 741, s. 1.)

Editor's Note. — Session Laws 1975, c. 741, s. 12, makes this Chapter effective Dec. 1, 1975.

§ 89D-2. Definition. — A "landscape contractor" within the meaning of this Chapter is any person, partnership, association or corporation who for compensation or valuable consideration or promise thereof engages in the business requiring the art, experience, ability, knowledge, science and skill to install, plant, repair and maintain gardens, lawns, shrubs, vines, bushes, trees and other decorative vegetation including the grading and preparation of plots and areas of land for decorative treatment and arrangement; who constructs or installs garden pools, fountains, pavilions, conservatories, hothouses and greenhouses, incidental retaining walls, fences, walks, drainage and sprinkler systems; or who engages in incidental construction in connection therewith, or does any part thereof in such a manner that, under an agreed specification, an acceptable landscaping project can be executed. (1975, c. 741, s. 2.)

§ 89D-3. Application of Chapter. — The provisions of this Chapter shall not apply to and shall not include any person, partnership, association or corporation who shall perform any of the acts aforesaid in G.S. 89D-2 with reference to any property, so long as that person, partnership, association or corporation shall not use the title "landscape contractor." (1975, c. 741, s. 3.)

§ 89D-4. Landscape Contractors' Registration Board created; membership; compensation; powers, etc. — (a) There is hereby created the North Carolina Landscape Contractors' Registration Board, hereinafter called the Board, which shall issue registration certificates of title to landscape contractors. The Board shall be composed of nine members. Two members shall be appointed by the Commissioner of Agriculture; two members shall be appointed by the Governor, with one being and having been for the preceding five years prior to the date of his appointment actively and principally engaged in the business of landscape contracting, and with one being a landscape architect as defined in G.S. 89A-1; and five members shall be appointed by the board of directors of the North Carolina Association of Nurserymen with at least one from the Western, Piedmont, Central, and Coastal Plain areas of the State.

On the initial Board the appointees of the Commissioner of Agriculture shall serve for a term of three years; one of the appointees of the Governor shall serve for a term of two years and the other appointee shall serve for a term of one year; one of the appointees of the board of directors shall serve for a term of three years, two for a term of two years, and two for a term of one year. The initial appointments shall be made prior to December 1, 1975, and the terms of successors shall begin on December 1 of the appropriate year thereafter.

After the terms of the initial members of the Board expire, all appointments shall be for terms of three years.

Any vacancy on the Board created by death, resignation or otherwise shall be filled for the unexpired term by the appropriate appointing dean, commissioner, Governor, or board of directors.

(b) From its funds, the Board shall pay its members at the rate set out in G.S. 93B-5: Provided, that at no time shall the expense exceed the cash balance on hand.

(c) The Board shall have power to make such rules and regulations as are not inconsistent with the provisions of this Chapter and the laws of North Carolina. The Board shall not make rules or regulations regulating commissions, salaries, or fees to be charged by registrants under this Chapter. The Board shall adopt a seal for its use, which shall bear thereon the words "North Carolina Landscape Contractors' Registration Board."

(d) The Board may employ a secretary-treasurer and such clerical assistance as may be necessary to carry out the provisions of this Chapter and to put into effect such rules and regulations as the Board may promulgate. The Board shall fix salaries for employees and shall require employees to make good and sufficient surety bond for the faithful performance of their duties.

(e) The Board shall be entitled to the services of the Attorney General of North Carolina in connection with the affairs of the Board or may, on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this Chapter, but the fee paid for such service shall be approved by the Attorney General. (1975, c. 741, s. 4.)

§ 89D-5. Application for certificate; examination; renewal. — (a) Any person, partnership, association or corporation hereinafter desiring to register and be titled as a landscape contractor shall make written application for a certificate of title to the Board on such forms as are prescribed by the Board. Each applicant for a certificate of title as a landscape contractor shall be at least 18 years of age. Prior to July 1, 1976, each applicant for a certificate shall have been actively engaged as an untitled landscape contractor for at least one year prior to date of application. After July 1, 1976, an applicant shall furnish evidence satisfactory to the Board of three years' experience in landscape contracting or the completion of a study or combination of study and experience in landscape contracting equivalent to three years' experience under a landscape contractor. Each application for an initial certificate shall be accompanied by an application fee of twenty dollars (\$20.00).

(b) Any person who files such application to the Board in proper manner to be registered and titled as a landscape contractor shall be required to take an oral or written examination to determine his qualifications. The Board will compile a manual from which the examination will be prepared.

If the results of the examination shall be satisfactory, the Board shall issue to such a person a certificate, authorizing such person to be titled as a landscape contractor in the State of North Carolina, upon payment of privilege taxes now required by law, or that may hereafter be required by law. Anyone failing to pass an examination may be reexamined without payment of additional fee, under such rules as the Board may adopt in such cases.

(c) All certificates granted and issued by the Board under the provisions of this Chapter shall expire annually on December 31. Renewal of such certificates may be effected at any time during the month preceding the expiration date of such certificates upon proper application to the Board accompanied by the payment to the secretary-treasurer of the Board of a renewal fee, as set by the Board, of not more than fifty dollars (\$50.00). The fee for an initial certificate shall be the same as for a renewal certificate and is in addition to the application fee. All certificates reinstated after expiration date thereof shall be subject to a late filing fee of ten dollars (\$10.00). In the event a registrant fails to obtain a reinstatement of such certificate within 12 months from the date of expiration thereof, the Board may, in its discretion, consider such registrant subject to the provisions of this Chapter relating to the issuance of an original certificate. Duplicate certificates may be issued by the Board upon payment of a fee of one dollar (\$1.00) by the registrant. (1975, c. 741, s. 5.)

§ 89D-6. Registers of applicants and certificate holders. — (a) The secretary-treasurer of the Board shall keep a register of all applicants for certificates of title. The register shall include the date of application, name, place of business, place of residence, and indicate whether the certificate of title was granted or refused.

(b) The secretary-treasurer of the Board shall also keep a current roster showing the names and places of business of all registered titled landscape contractors. The roster shall be kept on file in the office of the Board and be open to public inspection.

(c) On or before the first day of September of each year, the Board shall file with the Secretary of State a copy of the roster of landscape contractors holding certificates of title. At the same time the Board shall file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Board for the preceding fiscal year ending June 30. Such statement shall be attested by the secretary-treasurer of the Board. (1975, c. 741, s. 6.)

§ 89D-7. Denial, revocation or suspension of certificate. — (a) The Board shall have power to revoke or suspend certificates of title herein provided. The Board may upon its own motion or upon a verified complaint in writing hold a hearing as hereinafter provided to investigate the actions of any titled landscape contractor. The Board shall have the power to suspend or revoke any certificate of title issued under the provisions of this Chapter if the registrant has by false or fraudulent representations obtained a certificate; if the registrant has been convicted or has entered a plea of nolo contendere to any crime involving moral turpitude in any court, State or federal; if the registrant is found to have committed any act which constitutes improper, fraudulent or dishonest dealing; or if the registrant violates any rule or regulation duly promulgated by the Board.

(b) In all proceedings under this section for the revocation, denial or suspension of certificates, the provisions of Chapter 150 or Chapter 150A, of the General Statutes, whichever is in effect, shall be applicable. (1975, c. 741, s. 7.)

§ 89D-8. Out-of-state applicants. — An applicant from another state which offers registration privileges to residents of North Carolina may be registered by conforming to all the provisions of this Chapter and, in the discretion of the Board, such other terms and conditions as are required of North Carolina residents applying for a certificate in such other state. The Board may exempt from the examination prescribed in this Chapter a landscape contractor duly registered in another state if a similar exemption is extended to registered landscape contractors from North Carolina. (1975, c. 741, s. 8.)

§ 89D-9. Persons in practice prior to July 1, 1976. — Before July 1, 1976, any person, partnership, corporation or other legal entity submitting an application, application fee and evidence satisfactory to the Board that he has actively engaged in the practice of landscape contracting for one year prior to July 1, 1976, shall be issued a certificate of title without the requirement of examination. (1975, c. 741, s. 10.)

§ 89D-10. Injunctions for violation of Chapter. — The Board shall have authority to petition for, and the superior courts of the State shall have authority to issue, temporary restraining orders, and preliminary and permanent injunctions for violations of this Chapter. (1975, c. 741, s. 11.)

Chapter 90.

Medicine and Allied Occupations.

Article 1.

Practice of Medicine.

- Sec.
90-8. Officers may administer oaths, and subpoena witnesses and records.
90-9. Examination for license; scope; conditions and prerequisites.
90-10. Provision in lieu of examination.
90-13. When license without examination allowed.
90-14. Revocation, suspension, annulment or denial of license.
90-14.2. Hearing before revocation or suspension of a license.
90-15. License fee; salaries, fees, and expenses of Board.
90-16. Board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure.
90-18.1. Limitation on physician's assistants and registered nurses authorized to prescribe, compound and dispense drugs.

Article 1A.

Treatment of Minors.

- 90-21.1. When physician may treat minor without consent of parent, guardian or person in loco parentis.
90-21.4. Responsibility, liability and immunity of physicians.
90-21.5. Minor's consent sufficient for certain medical health services.
90-21.6 to 90-21.10. [Reserved.]

Article 1B.

Medical Malpractice Actions.

- 90-21.11. Definition.
90-21.12. Standard of health care.
90-21.13. Informed consent to health care treatment or procedure.
90-21.14. First aid or emergency treatment; liability limitation.
90-21.15 to 90-21.19. [Reserved.]

Article 1C.

Physicians and Hospital Reports.

- 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.
90-21.21. Counties to which Article applicable.

Article 2.

Dentistry.

- Sec.
90-29. Necessity for license; dentistry defined; exemptions.

Article 4.

Pharmacy.

Part 1. Practice of Pharmacy.

- 90-64. Pharmacist licensed by reciprocity.

Article 5.

North Carolina Controlled Substances Act.

- 90-87. Definitions.
90-88. Authority to control.
90-89. Schedule I controlled substances.
90-90. Schedule II controlled substances.
90-91. Schedule III controlled substances.
90-92. Schedule IV controlled substances.
90-93. Schedule V controlled substances.
90-94. Schedule VI controlled substances.
90-95. Violations; penalties.
90-95.2. Cooperation between law-enforcement agencies.
90-95.3. Restitution to law-enforcement agencies for undercover purchases.
90-96. Conditional discharge and expunction of records for first offense.
90-99. Republishing of schedules.
90-100. Rules and regulations.
90-101. Annual registration to manufacture, etc., controlled substances generally; effect of registration; exceptions; waiver; inspection.
90-102. Additional provisions as to registration.
90-103. Revocation or suspension of registration.
90-104. Records of registrants or practitioners.
90-106. Prescriptions and labeling.
90-107. Prescriptions, stocks, etc., open to inspection by officials.
90-109. Nonprofessional treatment.
90-109.1. Treatment.
90-111. Cooperative arrangements.
90-112.1. Remission or mitigation of forfeitures; possession pending trial.
90-113.2. Judicial review.
90-113.3. Education and research.
90-113.4A. Rendering inoperable of hypodermic syringes and needles required before discarding.

**Article 5A.
North Carolina Toxic Vapors Act.**

Sec.

90-113.14. Conditional discharge and expunction of records for first offenses.

Article 6.

Optometry.

90-114. Optometry defined.

90-115.1. Acts not constituting the unlawful practice of optometry.

90-118. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses; educational requirements for prescription and use of pharmaceutical agents.

90-118.10. Annual renewal of licenses.

90-118.11. Unauthorized practice; penalty.

90-127.2. Filling prescriptions.

Article 8.

Chiropractic.

90-143. Definitions of chiropractic; examinations; educational requirements.

90-149. Application fee.

90-153. Licensed chiropractors may practice in public hospitals.

90-155. Annual fee for renewal of license.

90-157.1. Free choice by patient guaranteed.

90-157.2. Doctor of Chiropractic as expert.

Article 9.

Nurse Practice Act.

90-158. Definitions.

90-167. Practice as registered nurse and licensed practical nurse regulated.

Article 12.

Podiatrists.

90-188 to 90-202.1. [Recodified.]

Article 12A.

Podiatrists.

90-202.2. "Podiatry" defined.

90-202.3. Unlawful to practice unless registered.

90-202.4. Board of Podiatry Examiners; how elected; terms of office; powers; duties.

90-202.5. Applicants to be examined; examination fee; requirements.

90-202.6. Examinations; subjects; certificates.

90-202.7. Reexamination of unsuccessful applicants.

90-202.8. Revocation of certificate; grounds for; suspension of certificate.

90-202.9. Fees for certificates and

Sec.

examinations; compensation of Board.

90-202.10. Annual fee; cancellation or renewal of license.

90-202.11. Continuing education courses required.

90-202.12. Free choice by patient guaranteed.

90-202.13. Injunctions.

90-202.14. Not applicable to physicians.

Article 13.

Embalmers and Funeral Directors.

90-203 to 90-210.17. [Recodified.]

Article 13A.

Practice of Funeral Service.

90-210.18. State Board; members; election; qualifications; term; vacancies.

90-210.19. Oath of office.

90-210.20. Definitions.

90-210.21. State institutions.

90-210.22. Required meetings.

90-210.23. Powers and duties of the Board.

90-210.24. Inspector.

90-210.25. Licensing.

Article 14.

Cadavers for Medical Schools.

90-212 to 90-216. [Repealed.]

Article 14B.

Disposition of Unclaimed Bodies.

90-216.6. Unclaimed bodies; disposition.

90-216.7 to 90-216.11. [Reserved.]

Article 14C.

Final Disposition or Transportation of Deceased Migrant Farm Workers and Their Dependents.

90-216.12. Final disposition or transportation of deceased migrant farm workers and their dependents.

Article 15A.

Uniform Anatomical Gift Act.

90-220.1. Definitions.

90-220.2. Persons who may execute an anatomical gift.

90-220.3. Persons who may become donees; purposes for which anatomical gifts may be made.

90-220.4. Manner of executing anatomical gifts.

90-220.5. Delivery of document of gift.

90-220.6. Amendment or revocation of the gift.

90-220.7. Rights and duties at death.

90-220.11. Giving of blood by persons 17 years of age or more.

GENERAL STATUTES OF NORTH CAROLINA

Article 16.

Dental Hygiene Act.

Sec.

90-226. Provisional license.

Article 17.

Dispensing Opticians.

90-236. What constitutes practicing as a dispensing optician.

90-237. Qualifications for dispensing optician.

90-240. Qualifications for taking the examination; subjects examined.

90-241. Fees required.

90-246. Yearly license fees.

90-249. Powers of the Board.

Article 18A.

Practicing Psychologists.

90-270.2. Definitions.

90-270.3. Practice of medicine and optometry not permitted.

90-270.4. Exemptions to this Article.

90-270.5. Temporary licenses.

90-270.6. Board of Examiners in Psychology; appointment; term of office; composition.

90-270.7. Qualifications of Board members.

90-270.11. Licensing and examination.

90-270.12. [Repealed.]

90-270.14. Renewal of licenses.

90-270.15. Refusal, suspension, or revocation of licenses.

Article 19.

Sterilization Operations.

90-271. Operation lawful upon request of married person or person over 18.

Article 20.

Nursing Home Administrator Act.

90-280. Fees; display of license.

Article 22.

Licensure Act for Speech and Language Pathologists and Audiologists.

Sec.

90-292. Declaration of policy.

90-293. Definitions.

90-294. License required; Article not applicable to certain activities.

90-295. Qualifications of applicants for licensure.

90-296. Examinations.

90-297. Registration and issuance of licenses; licenses for persons licensed in other jurisdiction or engaged in practice on October 1, 1975.

90-298. Temporary license.

90-299. Licensee to notify Board of place of practice.

90-300. Renewal of licenses.

90-301. Grounds for suspension or revocation of license.

90-302. Prohibited acts and practices.

90-303. Board of Examiners for speech and language pathology and audiology; qualifications, appointment and terms of members; vacancies; meetings; etc.

90-304. Powers and duties of Board.

90-305. Fees.

90-306. Penalty for violation.

90-307. Severability.

90-308 to 90-319. [Reserved.]

Article 23.

Right to Natural Death; Brain Death.

90-320. General purpose of Article.

90-321. Right to a natural death.

90-322. Brain death.

ARTICLE 1.

Practice of Medicine.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-2. Board of Examiners.

Suit Against Board. — The Board was created by statute as an agency of the State. An action against an agency of the State is in fact an action against the State. Neither the State nor any of its institutions or agencies can be sued

without its permission. *Mazzucco v. North Carolina Bd. of Medical Exmrs.*, 31 N.C. App. 47, 228 S.E.2d 529, appeal dismissed, 291 N.C. 323, 230 S.E.2d 676 (1976).

§ 90-8. Officers may administer oaths, and subpoena witnesses and records. — The president and secretary of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to the performance of its duties, and to summon and to issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board, and to order that records concerning the treatment of patients relevant to the Board's inquiry be produced before the Board or for inspection and copying by representatives of the Board by the custodian of such records. (1913, c. 20, s. 7; C. S., s. 6612; Ex. Sess. 1921, c. 44, s. 3; 1953, c. 1248, s. 1; 1975, c. 690, s. 1.)

Editor's Note. — The 1975 amendment rewrote the section.

§ 90-9. Examination for license; scope; conditions and prerequisites. — It shall be the duty of the Board of Medical Examiners to examine for license to practice medicine or surgery, or any of the branches thereof, every applicant who complies with the following provisions: He shall, before he is admitted to examination, satisfy the Board that he has an academic education equal to the entrance requirements of the University of North Carolina, or furnish a certificate from the superintendent of public instruction of the county that he has passed an examination upon his literary attainments to meet the requirements of entrance in the regular course of the State University. He shall exhibit a diploma or furnish satisfactory proof of graduation from a medical college or an osteopathic college approved by the American Osteopathic Association at the time of his graduation, which time of graduation shall have been on January 1, 1960, or subsequent thereto and which medical and osteopathic schools shall require an attendance of not less than four years or for a lesser period of time approved by the Board, and supply such facilities for clinical and scientific instruction as shall meet the approval of the Board.

The examination shall cover the branches of medical science and subjects which the Board deems necessary to determine competence to practice medicine.

If the applicant successfully passes such examination as determined by the Board, and if the applicant also satisfies the Board that he has successfully completed one year of training after his graduation from medical school in a medical education program approved by the Board, the Board shall grant such applicant a license authorizing the applicant to practice medicine in any of its branches.

Applicants shall be examined by number only; names and other identifying information shall not appear on examination papers. (Rev., s. 4498; 1913, c. 20, ss. 2, 3, 6; C. S., s. 6613; 1921, c. 47, s. 1; 1969, c. 612, s. 1; c. 929, s. 1; 1971, c. 1150, s. 1; 1977, c. 838, s. 1.)

Editor's Note. — The 1977 amendment, effective Oct. 1, 1977, rewrote the third paragraph.

§ 90-10. Provision in lieu of examination. — In lieu of the above examination, the Board may grant a license to an applicant who is found to have passed the examination given by the National Board of Medical Examiners, or who has passed such other examination which the Board deems to be equivalent to the examination given by the Board, provided the applicant meets the other qualifications set forth in this Article. (C. S., s. 6614; 1921, c. 41, s. 2; Ex. Sess. 1921, c. 44, s. 4; 1969, c. 612, s. 2; c. 929, s. 2; 1971, c. 1150, s. 2; 1975, c. 690, s. 2.)

Editor's Note. — The 1975 amendment passed" and ending "examination given by the Board." inserted the language beginning "or who has

§ 90-13. When license without examination allowed. — The Board of Medical Examiners shall in their discretion issue a license to any applicant to practice medicine and surgery in this State without examination if said applicant exhibits a diploma or satisfactory proof of graduation from a medical or osteopathic college, approved as provided in G.S. 90-9 and requiring an attendance of not less than four years or for such lesser period of time approved by the Board, and a license issued to him to practice medicine and surgery by the Board of Medical Examiners of another state, and has successfully completed one year of training after his graduation from medical college in a medical education and training program approved by the Board, in which program the Board may permit him to practice medicine. Such a license may be granted for such a period of time and upon such conditions as the Board may deem advisable. (1907, c. 890; 1913, c. 20, s. 3; C. S., s. 6617; 1969, c. 612, s. 3; 1971, c. 1150, s. 4; 1975, c. 690, s. 3; 1977, c. 838, s. 2.)

Editor's Note. — The 1975 amendment added the second sentence. successfully completed one year of training" to the end of the first sentence.

The 1977 amendment, effective Oct. 1, 1977, added the language beginning "and has

§ 90-14. Revocation, suspension, annulment or denial of license. — The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

- (1) Immoral or dishonorable conduct;
- (2) Producing or attempting to produce an abortion contrary to law;
- (3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with his application for a license;
- (4) Repealed by Session Laws 1977, c. 838, s. 3.
- (5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against him, and the results of examination shall be admissible in evidence in a hearing before the Board;

- (6) Unprofessional conduct, including, but not limited to, any departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without North Carolina;
- (7) Conviction in any court of the commission of a crime involving moral turpitude, or of the violation of a law involving the practice of medicine or the conviction of a felony;
- (8) By false representations has obtained or attempted to obtain practice, money or anything of value;
- (9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which he has been educated;
- (10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise;
- (11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating his failure to properly treat a patient and may require such physician to submit to inquiries or examinations, written or oral, by members of the Board or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee;
- (12) Promotion of the sale of drugs, devices, appliances or goods provided for a patient in such a manner as to exploit the patient for financial gain of the physician;
- (13) Suspension or revocation of a license to practice medicine in any other state, or territory of the United States, or other country.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant, revoke a license issued to it, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of his practice as the Board deems advisable. The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or rescinded. (C. S., s. 6618; 1921, c. 47, s. 4; Ex. Sess. 1921, c. 44, s. 6; 1933, c. 32; 1953, c. 1248, s. 2; 1969, c. 612, s. 4; c. 929, s. 6; 1975, c. 690, s. 4; 1977, c. 838, s. 3.)

Editor's Note. — The 1975 amendment rewrote the section.

The 1977 amendment deleted subdivision (4), which read "Obtained or attempted to obtain practice in his profession by the making of false representations," and deleted "minimal" preceding "standards of acceptable and prevailing medical practice" in subdivision (6).

This section does not deny due process. Hoke v. Board of Medical Exmrs., 395 F. Supp. 357 (W.D.N.C. 1975).

The combination in an agency of investigative and adjudicatory functions does not itself violate

due process. Hoke v. Board of Medical Exmrs., 395 F. Supp. 357 (W.D.N.C. 1975).

This section's language itself and in conjunction with established medical ethics sufficiently informs physicians of the standards by which they are to conduct themselves and their practice. Hoke v. Board of Medical Exmrs., 395 F. Supp. 357 (W.D.N.C. 1975).

Cited in Mazzucco v. North Carolina Bd. of Medical Exmrs., 31 N.C. App. 47, 228 S.E.2d 529 (1976).

§ 90-14.2. Hearing before revocation or suspension of a license. — Before the Board shall revoke, restrict or suspend any license granted by it, the licensee shall be given a written notice indicating the general nature of the charges, accusation, or complaint made against him, which notice may be prepared by a committee or one or more members of the Board designated by the Board, and stating that such licensee will be given an opportunity to be heard concerning such charges or complaint at a time and place stated in such notice, or at a time and place to be thereafter designated by the Board, and the Board shall hold a public hearing not less than 30 days from the date of the service of such notice upon such licensee, at which such licensee may appear personally and through counsel, may cross examine witnesses and present evidence in his own behalf. A physician who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the physician has his residence. Such licensee or physician may, if he desires, file written answers to the charges or complaints preferred against him within 30 days after the service of such notice, which answer shall become a part of the record but shall not constitute evidence in the case. (1953, c. 1248, s. 3; 1975, c. 690, s. 5.)

Editor's Note. — The 1975 amendment rewrote the first sentence.

The function of the Board under this section is certainly a quasi-judicial function. Mazzucco v. North Carolina Bd. of Medical Exmrs., 31 N.C. App. 47, 228 S.E.2d 529, appeal dismissed, 291 N.C. 323, 230 S.E.2d 676 (1976).

Applicability of Doctrine of Absolute Privilege In Defamation Actions to Board. — The public policy which supports the doctrine of

absolute privilege in defamation actions fully supports the application of the doctrine to the Board of Medical Examiners and the individual members in the performance of their quasi-judicial statutory duties. Mazzucco v. North Carolina Bd. of Medical Exmrs., 31 N.C. App. 47, 228 S.E.2d 529, appeal dismissed, 291 N.C. 323, 230 S.E.2d 676 (1976).

Quoted in Hoke v. Board of Medical Exmrs., 395 F. Supp. 357 (W.D.N.C. 1975).

§ 90-15. License fee; salaries, fees, and expenses of Board. — Each applicant for a license by examination shall pay to the treasurer of the Board of Medical Examiners of the State of North Carolina a fee which shall be prescribed by said Board in an amount not exceeding the sum of one hundred dollars (\$100.00) before being admitted to the examination. Whenever any license is granted without examination, as authorized in G.S. 90-13, the applicant shall pay to the treasurer of the Board a fee in an amount to be prescribed by the Board not in excess of one hundred dollars (\$100.00). Whenever a limited license is granted as provided in G.S. 90-12, the applicant shall pay to the treasurer of the Board a fee of fifty dollars (\$50.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training, the applicant shall pay a fee of ten dollars (\$10.00). A fee of ten dollars (\$10.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the treasurer of the Board of Medical Examiners of the State of North Carolina, to be held by him as a fund for the use of said Board. The compensation and expenses of the members and officers of the said Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of said fund, upon the warrant of the said Board and all expenses proper and necessary in the opinion of the officers and members of said Board shall be fixed by the Board but shall not exceed ten dollars (\$10.00) per day per member for time spent in the performance and discharge of his duties as a member of said Board, and reimbursement for travel and other necessary expenses incurred in the performance of his duties as a member of said Board. Any unexpended sum or sums of money remaining in the treasury of said Board at the expiration of the terms of office of the members thereof shall be paid over to their successors in office.

For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount. (1858-9, c. 258, s. 13; Code, s. 3130; Rev., s. 4501; 1913, c. 20, ss. 4, 5; C. S., s. 6619; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 7; 1953, c. 187; 1969, c. 929, s. 4; 1971, c. 817, s. 2; c. 1150, s. 5; 1977, c. 838, s. 4.)

Editor's Note. — The 1977 amendment substitutes "in a medical education and training program approved by the Board" for "within the confines of a hospital" in the third sentence of the first paragraph.

§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure. — The Board of Examiners shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The Board of Examiners shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The Board of Examiners shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the Board of Medical Examiners of the State of North Carolina, shall be admitted as evidence in any court of this State when it is otherwise competent.

The Board may in an executive session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician. (1858-9, c. 258, s. 12; Code, s. 3129; Rev., s. 4500; C. S., s. 6620; 1921, c. 47, s. 6; 1977, c. 838, s. 5.)

Editor's Note. — The 1977 amendment added the second and third paragraphs.

§ 90-18. Practicing without license; practicing defined; penalties.

The North Carolina statutes proscribe a registered or licensed practical nurse from carrying out orders given by a licensed physician's assistant. — See opinion of Attorney General to Mr. Ed McClearen, Staff to

Mental Health Commission, 46 N.C.A.G. 169 (1977), decided prior to the passage of Chapter 904, 1977 Session Laws, which will expire on July 1, 1978, and which amended §§ 90-18.1 and 90-158.

§ 90-18.1. Limitation on physician's assistants and registered nurses authorized to prescribe, compound and dispense drugs. — Any registered nurse or assistant to a physician who is approved to perform medical acts under the provisions of G.S. 90-18 is authorized to prescribe drugs under written standing orders of the supervising physician, if such function is specifically approved for that person by the Board of Medical Examiners; in accordance with such other safeguards and regulations as promulgated by such Board.

Any such person authorized to prescribe drugs shall be identified by a number assigned by the Board of Medical Examiners and such number shall be indicated in all prescriptions both oral and written.

Any such person is authorized to compound and dispense drugs when such functions are performed under the supervision of a licensed pharmacist in a manner prescribed by rules and regulations adopted by the North Carolina Board of Pharmacy.

Any such person approved by the Board of Medical Examiners may order the administration of medications and treatment by a registered nurse or licensed practical nurse in accordance with regulations adopted by the Board and under written standing orders of the supervising physician previously made available to such registered nurse or licensed practical nurse. The supervising physician shall be held personally responsible for any and all oral or written standing orders duly performed by a registered nurse or licensed practical nurse at the direction of a physician's assistant or nurse practitioner. (1975, c. 627; 1977, c. 904, s. 1.)

Editor's Note. — The 1977 amendment added the fourth paragraph. Session Laws 1977, c. 904,

s. 6, provides: "The provisions of this act shall expire on July 1, 1978."

ARTICLE 1A.*Treatment of Minors.*

§ 90-21.1. When physician may treat minor without consent of parent, guardian or person in loco parentis. — It shall be lawful for any physician licensed to practice medicine in North Carolina to render treatment to any minor without first obtaining the consent and approval of either the father or mother of said child, or any person acting as guardian, or any person standing in loco parentis to said child where:

- (4) Where the parents refuse to consent to a procedure, and the necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen the physical condition of the child. No treatment shall be administered to a child over the parent's objection as herein authorized unless the physician shall first obtain the opinion of another physician licensed to practice medicine in the State of North Carolina that such procedure is necessary to prevent immediate harm to the child.

Provided, however, that the refusal of a physician to use, perform or render treatment to a minor without the consent of the minor's parent, guardian, or

person standing in the position of loco parentis, in accordance with this Article, shall not constitute grounds for a civil action or criminal proceedings against such physician. (1965, c. 810, s. 1; 1977, c. 625, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added subdivision (4). by the amendment, only the introductory language and subdivision (4) are set out.

As the other subdivisions were not changed

§ 90-21.4. Responsibility, liability and immunity of physicians. — (a) Any physician licensed to practice medicine in North Carolina providing health services to a minor under the terms, conditions and circumstances of this Article shall not be held liable in any civil or criminal action for providing such services without having obtained permission from the minor's parent, legal guardian, or person standing in loco parentis. The physician shall not be relieved on the basis of this Article from liability for negligence in the diagnosis and treatment of a minor.

(b) The physician shall not notify a parent, legal guardian, or person standing in loco parentis, without the permission of the minor, concerning the medical health services set out in G.S. 90-21.5(a), unless the situation in the opinion of the attending physician indicates that notification is essential to the life or health of the minor. If a parent, legal guardian or person standing in loco parentis contacts the physician concerning the treatment or medical services being provided to the minor, the physician may give information. (1965, c. 810, s. 4; 1977, c. 582, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section. part that the act shall not apply to pending litigation.

Session Laws 1977, c. 582, s. 3, provides in

§ 90-21.5. Minor's consent sufficient for certain medical health services. — (a) Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130-81, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance. This section does not authorize the inducing of an abortion, performance of a sterilization operation, or commitment to a mental institution or hospital for confinement or treatment of a mental condition.

(b) Any minor who is emancipated may consent to any medical treatment, dental and health services for himself or for his child. (1971, c. 35; 1977, c. 582, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section. part that the act shall not apply to pending litigation.

Session Laws 1977, c. 582, s. 3, provides in

§§ 90-21.6 to 90-21.10: Reserved for future codification purposes.

ARTICLE 1B.

Medical Malpractice Actions.

§ 90-21.11. Definition. — As used in this Article, the term “health care provider” means without limitation any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital as defined by G.S. 131-126.1(3); or a nursing home as defined by G.S. 130-9(e)(2); or any other person who is legally responsible for the negligence of such person, hospital or nursing home; or any other person acting at the direction or under the supervision of any of the foregoing persons, hospital, or nursing home. (1975, 2nd Sess., c. 977, s. 4.)

Cross References. — As to limitation of actions for malpractice, see §§ 1-15, 1-17. As to the North Carolina Health Care Excess Liability Fund, see §§ 58-254.19 through 58-254.29. As to liability insurance or self-insurance covering health-care practitioners employed by the University of North Carolina, see §§ 116-219 through 116-222.

Editor's Note. — Session Laws 1975, 2nd Sess., c. 977, s. 10, makes this Article effective July 1, 1976.

Session Laws 1975, 2nd Sess., c. 977, s. 7, contains a severability clause. Session Laws 1975, 2nd Sess., c. 977, s. 8, provides that the act shall not apply to pending litigation.

§ 90-21.12. Standard of health care. — In any action for damages for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of medical, dental, or other health care, the defendant shall not be liable for the payment of damages unless the trier of the facts is satisfied by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action. (1975, 2nd Sess., c. 977, s. 4.)

§ 90-21.13. Informed consent to health care treatment or procedure. — (a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or the patient's spouse, parent, guardian, nearest relative or other person authorized to give consent for the patient where:

- (1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and
- (2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or
- (3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by

the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact.

(c) A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of Article 7 of Chapter 35 and Articles 1A and 19 of Chapter 90, the provisions of those Articles shall control and continue in full force and effect. (1975, 2nd Sess., c. 977, s. 4.)

§ 90-21.14. First aid or emergency treatment; liability limitation. — (a) Any person who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect. (1975, 2nd Sess., c. 977, s. 4.)

Applicability of Subsection (a) to Emergency Medical Care Personnel. — Subsection (a) is inapplicable to emergency medical care personnel who are called to the scene of a medical emergency. Opinion of

Attorney General to Mr. I.O. Wilkerson, Director, Division of Facility Services, Department of Human Resources, 46 N.C.A.G. 42 (1976).

§§ 90-21.15 to 90-21.19: Reserved for future codification purposes.

ARTICLE 1C.

Physicians and Hospital Reports.

§ 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses. — (a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b) shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator, or other person designated by the Director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of his deputies.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence.

(c) Each report made pursuant to subsections (a) and (b) above shall state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries.

(d) Any hospital, sanitarium, or other like institution or Director, Administrator, or other designated person, or physician or surgeon participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report. (1971, c. 4; 1977, c. 31; c. 843, s. 2.)

Editor's Note. — This Article as enacted by Session Laws 1971, c. 4, and amended by Session Laws 1971, c. 594, was applicable to New Hanover and Alamance Counties only, and was therefore not codified. The 1971 act was amended by Session Laws 1977, c. 31, effective July 1, 1977, so as to make it applicable to eleven additional counties. The 1977 amendment having

rendered the 1971 act general within the definition adopted for the General Statutes, this Article is now codified.

The 1977 amendment, effective July 1, 1977, deleted "or illegal drug usage" following "caused by poisoning" near the middle of subsection (b).

§ 90-21.21. Counties to which Article applicable. — This Article shall apply only to Alamance, Avery, Beaufort, Buncombe, Craven, Davidson, Davie, Durham, Forsyth, Gaston, Guilford, Hertford, Hyde, Iredell, Martin,

Mecklenburg, Montgomery, New Hanover, Onslow, Polk, Randolph, Robeson, Rockingham, Rowan, Stanly, Stokes, Surry, Union, Wake and Wayne Counties. (1971, cc. 4, 594; 1977, c. 31; c. 843, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added Avery, Beaufort, Davidson, Davie, Durham, Gaston, Guilford,

Hertford, Hyde, Martin, Randolph, Robeson, Rowan, Stokes, Surry, Union, and Wayne to the list of counties.

ARTICLE 2.

Dentistry.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-22. Practice of dentistry regulated in public interest; Article liberally construed; Board of Dental Examiners; composition; qualifications and terms of members; vacancies; nominations and elections; compensation; expenditures by Board.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-29. Necessity for license; dentistry defined; exemptions.

(c) The following acts, practices, or operations, however, shall not constitute the unlawful practice of dentistry:

- (1) Any act by a duly licensed physician or surgeon performed in the practice of his profession;
- (2) The practice of dentistry, in the discharge of their official duties, by dentists in any branch of the military service of the United States or in the full-time employ of any agency of the United States;
- (3) The teaching of dentistry, in dental schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners, by any person or persons licensed to practice dentistry anywhere in the United States or in any country, territory or other recognized jurisdiction; provided, however, that such teaching of dentistry by any person or persons licensed in any jurisdiction other than a place in the United States must first be approved by the North Carolina State Board of Dental Examiners;
- (4) The practice of dentistry in dental schools or colleges in this State approved by the North Carolina State Board of Dental Examiners by students enrolled in such schools or colleges as candidates for a doctoral degree in dentistry when such practice is performed as a part

of their course of instruction and is under direct supervision of a dentist who is either duly licensed in North Carolina or qualified under subdivision (3) above as a teacher; additionally, the practice of dentistry by such students at State or county institutions with resident populations, hospitals, State or county health departments, area health education centers and State or county-owned nursing homes; subject to review and approval or disapproval by the said Board of Dental Examiners when in the opinion of the dean of such dental school or college or his designee, the students' dental education and experience are adequate therefor, and such practice is a part of the course of instruction of such students, is performed under the direct supervision of a duly licensed dentist acting as a teacher or instructor, and is without remuneration except for expenses and subsistence all as defined and permitted by the rules and regulations of said Board of Dental Examiners. Should the Board disapprove a specific program, the Board shall within 90 days inform the dean of its actions. Nothing herein shall be construed to permit the teaching of, delegation to or performance by any dental hygienist, dental assistant, or other auxiliary relative to any program of extramural rotation, of any function not heretofore permitted by the Dental Practice Act, the Dental Hygiene Act or by the rules and regulations of the Board;

- (5) The temporary practice of dentistry by licensed dentists of another state or of any territory or country when the same is performed, as clinicians, at meetings of organized dental societies, associations, colleges or similar dental organizations, or when such dentists appear in emergency cases upon the specific call of a dentist duly licensed to practice in this State;
- (6) The practice of dentistry by a person who is a graduate of a dental school or college approved by the North Carolina State Board of Dental Examiners and who is not licensed to practice dentistry in this State, when such person is the holder of a valid intern permit, or provisional license, issued to him by the North Carolina State Board of Dental Examiners pursuant to the terms and provisions of this Article, and when such practice of dentistry complies with the conditions of said intern permit, or provisional license;
- (7) Any act or acts performed by a dental hygienist when such act or acts are lawfully performed pursuant to the authority of Article 16 of this Chapter 90 or the rules and regulations of the Board promulgated thereunder;
- (8) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of subdivision (3) above;
- (9) Any act or acts performed by an assistant to a dentist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board;
- (10) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by the Board, when such functions are performed under the supervision of a dentist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of subdivision (3) above;
- (11) The extraoral construction, manufacture, fabrication or repair of prosthetic dentures, bridges, appliances, corrective devices, or other

structures designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth, by a person or entity not licensed to practice dentistry in this State, when the same is done or performed solely upon a written work order in strict compliance with the terms, provisions, conditions and requirements of G.S. 90-29.1 and 90-29.2. (1935, c. 66, s. 6; 1953, c. 564, s. 3; 1957, c. 592, s. 2; 1961, c. 446, s. 2; 1965, c. 163, ss. 1, 2; 1971, c. 755, s. 2; 1977, c. 368.)

Editor's Note. — The 1977 amendment, in subdivision (c)(4), combined the former first and second sentences into the present first sentence, and in that sentence, inserted "as candidates for a Doctoral Degree in Dentistry," "direct" preceding "supervision of a duly licensed dentist," and "all" preceding "as defined and permitted," substituted "under direct supervision of a dentist" for "under the supervision of a dentist," the language beginning "State or county institutions" and ending "said Board of Dental Examiners" for "any location upon patients or inmates of institutions wholly owned or operated by the State of North Carolina or any political subdivision or subdivisions thereof," and "are

adequate therefor" for "is adequate therefore, subject to review and approval by the said Board of Dental Examiners." The amendment also added the present second and third sentences of subdivision (c)(4).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Regulation by Board of Dental Laboratory Engaged in Acts Described in Subsection (b).

— The Board of Dental Examiners may not regulate a dental laboratory engaging in the acts described in subsection (b) so long as the laboratory is following the advertising and work order procedures established in G.S. 90-29.1 and 90-29.2. Opinion of Attorney General to Rep. W. S. Harris, 46 N.C.A.G. 203 (1977).

§ 90-40. Unauthorized practice; penalty.

Cited in *State v. Page*, 32 N.C. App. 478, 232 S.E.2d 460 (1977).

§ 90-41. Disciplinary action.

Cited in *State v. Page*, 32 N.C. App. 478, 232 S.E.2d 460 (1977).

§ 90-41.1. Hearings.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 4.

Pharmacy.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

Part 1. Practice of Pharmacy.

§ 90-61.1. Pharmacist intern license.

Cited in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

§ 90-64. Pharmacist licensed by reciprocity. — (a) The Board of Pharmacy may issue a temporary or probationary license to practice pharmacy in this State for a period of not less than one year, without examination, to any person who has been legally registered or licensed as a pharmacist by a board of pharmacy of another state, if the applicant shall present satisfactory evidence of the same qualifications as are required from licentiates in this State and that he was registered or licensed by examination by such other board of pharmacy, and that the standard of competence required by such other board of pharmacy is not lower than that required in this State; provided, that the Board, pursuant to regulations adopted by it, may issue a regular license as a pharmacist to an applicant who has practiced for one year in this State as a temporary or probationary pharmacist.

(b) An applicant who has taken and failed to pass the examinations of the North Carolina Board of Pharmacy given pursuant to G.S. 90-61 after July 1, 1977, shall not be granted reciprocal licensure until at least five years of active practice in pharmacy, provided that nothing in this section nor in the rules and regulations of the Board shall prevent any person who has taken and failed to pass the examinations of the North Carolina Board of Pharmacy prior to July 1, 1977, from being licensed by reciprocity pursuant to Board rules and regular regulations. An applicant for the licensure examinations in this State after July 1, 1977, who has registered as a candidate for licensure in another state shall appear before the Board of Pharmacy for explanation and clarification of the effect of this provision on eligibility for reciprocity in the event that the candidate is unsuccessful on the North Carolina examinations. (1905, c. 108, s. 16; Rev., s. 4482; C. S., s. 6660; 1945, c. 572, s. 2; 1971, c. 468; 1977, c. 598.)

Editor's Note. — The 1977 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

§ 90-71. Selling drugs without license prohibited; drug trade regulated.

When a drug is sold under circumstances which render the sale unlawful under this section and § 90-72, there is also a violation of

§ 90-95 if the drug involved is a controlled substance. *State v. Austin*, 31 N.C. App. 20, 228 S.E.2d 507 (1976).

§ 90-72. Compounding prescriptions without license.

When a drug is sold under circumstances which render the sale unlawful under § 90-71 and this section, there is also a violation of

§ 90-95 if the drug involved is a controlled substance. *State v. Austin*, 31 N.C. App. 20, 228 S.E.2d 507 (1976).

ARTICLE 5.

North Carolina Controlled Substances Act.

§ 90-86. Title of Article.

Cross Reference. — As to enforcement of this Article by the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety, see section 18A-19.

§ 90-87. Definitions. — As used in this Article:

(22) "Practitioner" means:

- a. A physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.
- b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.

(1977, c. 482, s. 6.)

Editor's Note. —

The 1977 amendment, effective on and after July 1, 1977, inserted "optometrist" near the beginning of paragraph (a) of subdivision (22). Session Laws 1977, c. 482, s. 7, provides: "The provisions of this act are applicable only to those individuals licensed pursuant thereto and shall not restrict, expand, or otherwise alter those other practices or acts governed by Chapter 90 of the General Statutes."

As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (22) are set out.

"Delivery" Means "Transfer". — In a prosecution for felonious sale and delivery of marijuana, and felonious possession of marijuana with intent to sell, trial judge's charge to the jury placing the burden on the State to prove that defendant "transferred" the marijuana was not prejudicial error, since "delivery" means "transfer" under this section. *State v. Dietz*, 289 N.C. 488, 223 S.E.2d 357 (1976).

The term "within the normal course of professional practice" in subdivision (22)a is not vague. It gives every practitioner fair notice

of the standard he must follow if his conduct is to come within the exception of the statute. That is all the Constitution requires. *State v. Best*, 31 N.C. App. 250, 229 S.E.2d 581 (1976), rev'd on other grounds, 292 N.C. 294, 233 S.E.2d 544 (1977).

The clause "who is licensed ... to ... prescribe drugs in the course of his professional practice" in subdivision (23)a is an adjective clause modifying the preceding noun "practitioner." It describes the one issuing the prescription. It does not change the definition of practitioner as given in subdivision (22)a. *State v. Best*, 31 N.C. App. 250, 229 S.E.2d 581 (1976), rev'd on other grounds, 292 N.C. 294, 233 S.E.2d 544 (1977).

Thus a practitioner who is licensed to issue a prescription in the course of "his" professional practice may not do so unless that "activity is within the normal course of professional practice." *State v. Best*, 31 N.C. App. 250, 229 S.E.2d 581 (1976), rev'd on other grounds, 292 N.C. 294, 233 S.E.2d 544 (1977).

Quoted in *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

§ 90-88. Authority to control. — (a) The North Carolina Drug Commission may add, delete, or reschedule substances within Schedules I through VI of this Article on the petition of any interested party, or its own motion. In every case the North Carolina Drug Commission shall give notice of and hold a public hearing prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article. A petition by the North Carolina Drug

Commission, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the North Carolina Drug Commission, as a matter of right. Notice as required by this section shall consist of notice by one publication in three newspapers of statewide circulation qualified for legal advertising in accordance with G.S. 1-597 and 1-598. In addition, the North Carolina Department of Human Resources shall mail a notice of the proposed change and the date and place of the public hearing to each registrant under this Article. In making a determination regarding a substance, the North Carolina Drug Commission shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychic or physiological dependence liability; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the required factors, the North Carolina Drug Commission shall make findings with respect thereto and shall issue an order adding, deleting or rescheduling the substance within Schedules I through VI of this Article.

(c) If the North Carolina Drug Commission designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the North Carolina Drug Commission shall similarly control, or cease control of, the substance under this Article after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance unless, within 180 days, the North Carolina Drug Commission objects to such inclusion. In such case, the North Carolina Drug Commission shall cause to be published and made public the reason for such objection and shall afford all interested parties an opportunity to be heard. At the conclusion of such meeting, the North Carolina Drug Commission shall make public its decision, which shall be final unless specifically acted upon by the North Carolina General Assembly. Upon publication of objection to inclusion under this Article by the North Carolina Drug Commission, control under this section shall automatically be stayed until such time as the North Carolina Drug Commission makes public its decision.

(e) The North Carolina Drug Commission shall exclude any nonnarcotic substance from the provisions of this Article if such substance may, under the federal Food, Drug and Cosmetic Act, lawfully be sold over-the-counter without prescription.

(f) Authority to control under this Article does not include distilled spirits, wine, malt beverages, or tobacco.

(g) The North Carolina Drug Commission shall similarly exempt from the provisions of this Article any chemical agents and diagnostic reagents not intended for administration to humans or other animals, containing controlled substances which either (i) contain additional adulterant or denaturing agents so that the resulting mixture has no significant abuse potential, or (ii) are packaged in such a form or concentration that the particular form as packaged has no significant abuse potential, where such substance was exempted by the Federal Bureau of Narcotics and Dangerous Drugs.

(h) When any substance is designated, rescheduled or deleted as a controlled substance pursuant to this section, the North Carolina Department of Human Resources shall mail a notice of this change to each registrant, to the State Bureau of Investigation, North Carolina Board of Pharmacy and to each district attorney within 30 days of this change.

(i) The North Carolina Department of Human Resources shall maintain a list of all preparations, compounds, or mixtures which are excluded, exempted and excepted from control under any schedule of this Article by the United States Drug Enforcement Administration and/or the North Carolina Drug Commission. This list and any changes to this list shall be mailed to the North Carolina Board of Pharmacy, the State Bureau of Investigation and each district attorney of this State. (1971, c. 919, s. 1; 1973, c. 476, s. 128; cc. 524, 541; c. 1358, ss. 2, 3, 15; 1977, c. 667, s. 3.)

Cross Reference. — As to the creation and organization of the North Carolina Drug Commission, see §§ 143B-377, 143B-378.

Editor's Note. —

The 1977 amendment, effective July 1, 1977, rewrote the former first and second sentences of subsection (a) as the present first sentence of the subsection, substituted "Department of Human Resources" for "Drug Authority" in subsection

(h) and near the beginning of subsection (i) and substituted "Drug Commission" for "Drug Authority" throughout the rest of the section.

Quoted in State v. Crews, 286 N.C. 41, 209 S.E.2d 462 (1974).

Stated in State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

Cited in State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-89. Schedule I controlled substances. — This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina Drug Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(a) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetylmethadol.
4. Alphameprodine.
5. Alphamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Diampromide.
14. Diethylthiambutene.
15. Difenoxin.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.

21. Ethylmethylthiambutene.
22. Etonitazene.
23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacylmorphane.
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidine.
38. Piritramide.
39. Proheptazine.
40. Properidine.
41. Propiram.
42. Racemoramide.
43. Trimeperidine.

(b) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Etorphine (except hydrochloride salt).
10. Heroin.
11. Hydromorphenol.
12. Methyl-desorphine.
13. Methylhydromorphine.
14. Morphine methylbromide.
15. Morphine methylsulfonate.
16. Morphine-N-Oxide.
17. Myrophine.
18. Nicocodeine.
19. Nicomorphine.
20. Normorphine.
21. Pholcodine.
22. Thebacon.
23. Drotebanol.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxymphetamine.

2. 5-methoxy-3, 4-methylenedioxyamphetamine.
3. 3, 4, 5-trimethoxyamphetamine.
4. Bufotenine.
5. Diethyltryptamine.
6. Dimethyltryptamine.
7. 4-methyl-2, 5-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Mescaline.
11. Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
12. N-ethyl-3-piperidyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn.
16. 2, 5-dimethoxyamphetamine.
17. 4-bromo-2, 5-dimethoxyamphetamine.
18. 4-methoxyamphetamine.
19. Thiophene Analog of Phencyclidine.

(d) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

1. Mecloqualone. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 844; c. 1358, ss. 4, 5, 15; 1975, c. 443, s. 1; c. 790; 1977, c. 667, s. 3; c. 891, s. 1.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added "(except hydrochloride salt)" to item 9 in subdivision (b).

The second 1975 amendment added "Difenoxin" and numbered it as item 16 in subdivision (a) and renumbered former items 16 through 43 as items 17 through 44.

The first 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority" in the second sentence of the introductory paragraph.

The second 1977 amendment deleted former item 13 of subdivision (a), which read "Dextrophan," renumbered former items 14 through 43 of subdivision (a) as present items 13 through 42, added item 19 to subdivision (c), and added subdivision (d).

Applied in *State v. Hardy*, 31 N.C. App. 67, 228 S.E.2d 487 (1976).

Cited in *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974); *State v. Hart*, 33 N.C. App. 235, 234 S.E.2d 430 (1977).

§ 90-90. Schedule II controlled substances. — This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina Drug Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(a) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:
 - (i) Raw opium.
 - (ii) Opium extracts.
 - (iii) Opium fluid extracts.
 - (iv) Powdered opium.
 - (v) Granulated opium.
 - (vi) Tincture of opium.
 - (vii) Codeine.
 - (viii) Ethylmorphine.
 - (ix) Etorphine hydrochloride.
 - (x) Hydrocodone.
 - (xi) Hydromorphone.
 - (xii) Metopon.
 - (xiii) Morphine.
 - (xiv) Oxycodone.
 - (xv) Oxymorphone.
 - (xvi) Thebaine.
2. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.
3. Opium poppy and poppy straw.
4. Coca leaves and any salts, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
5. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder from which contains the phenanthrine alkaloids of the opium poppy).

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Drug Commission or listed in another schedule:

1. Methaqualone
2. Amobarbital
3. Secobarbital
4. Pentobarbital. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 540, s. 6; c. 1358, ss. 6, 15; 1975, c. 443, s. 2; 1977, c. 667, s. 3; c. 891, s. 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote item 1 and added item 5 in subdivision (a).

The first 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority" in the second sentence of the introductory paragraph and in the introductory paragraph of subdivision (d).

The second 1977 amendment, in item 1 of subdivision (a), rewrote the introductory

language, deleted clause (vii), which read "Apomorphine," and renumbered clauses (viii) through (xvii) as clauses (vii) through (xvi).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (a) and (d) are set out.

Cited in *State v. Crews*, 286 N.C. 41, 209 S.E.2d 462 (1974).

§ 90-91. Schedule III controlled substances. — This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina Drug Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.

2. Chlorhexadol.

3. Glutethimide.

4. Lysergic acid.

5. Lysergic acid amide.

6. Methyprylon.

7. Phencyclidine.

8. Sulfondiethylmethane.

9. Sulfonethylmethane.

10. Sulfonmethane.

11. Any compound, mixture or preparation containing

(i) Amobarbital.

(ii) Secobarbital.

(iii) Pentobarbital.

or any salt thereof and one or more active ingredients which are not included in any other schedule.

12. Any suppository dosage form containing

(i) Amobarbital.

(ii) Secobarbital.

(iii) Pentobarbital.

or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(i) The North Carolina Drug Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(1975, c. 442; 1977, c. 667, s. 3.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added items 11 and 12 to subdivision (b).

The 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority" in the second sentence of the introductory paragraph and in subdivision (i).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (b) and (i) are set out.

Cited in *State v. Crews*, 286 N.C. 41, 209 S.E.2d 462 (1974).

§ 90-92. Schedule IV controlled substances. — This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina Drug Commission shall find: a low potential for abuse relative to the substances listed in Schedule

III of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule III of this Article. The following controlled substances are included in this schedule:

(a) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Barbitol
2. Chloral betaine
3. Chloral hydrate
4. Chlorazepate
5. Chlordiazepoxide
6. Clonazepam
7. Diazepam
8. Ethchlorvynol
9. Ethinamate
10. Flurazepam
11. Mebutamate
12. Meproamate
13. Methohexital
14. Methylphenobarbital
15. Oxazepam
16. Paraldehyde
17. Petrichloral
18. Phenobarbital
19. Prazepam

(b) The North Carolina Drug Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active, nonnarcotic, medicinal ingredients not having a stimulant or depressant effect on the central nervous system; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

(c) Any material, compound, mixture, or preparation which contains any of the following substances, including its salts, or isomers and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

1. Fenfluramine.

(d) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Diethylpropion.
2. Pemoline (including organometallic complexes and chelates thereof).
3. Phentermine.

(e) Other Substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

1. Dextropropoxyphene (Alpha-(plus)- 4-dimethyamino-1, 2-diphenyl-3-methyl-2-propionoxybutane). (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, ss. 8, 15; c. 1446, s. 5; 1975, cc. 401, 819; 1977, c. 667, s. 3; c. 891, s. 3.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, inserted mebutamate in the schedule in subdivision (a) and added subdivision (d).

The second 1975 amendment, effective July 15, 1975, inserted chlorazepate, chlordiazepoxide, clonazepam, diazepam, flurazepam and oxazepam in the schedule in subdivision (a).

The first 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority" in the second sentence of the introductory paragraph and in subdivision (b).

The second 1977 amendment added "Depressants. — Unless specifically excepted or unless listed in another schedule" to the beginning of subdivision (a), substituted the language beginning "including its salts, isomers" and ending "specific chemical designation" for "unless specifically excepted or unless listed in another schedule" at the end of the introductory language of subdivision (a), added item 19 to subdivision (a), and added subdivision (e).

§ 90-93. Schedule V controlled substances. — This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the North Carolina Drug Commission shall find: a low potential for abuse relative to the substances listed in Schedule IV of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule:

(a) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
2. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
3. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(b) A Schedule V substance may be sold at retail without a prescription only by a registered pharmacist and no other person, agent or employee may sell a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding the provisions of G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of a Schedule V substance, may be completed by a nonpharmacist. A pharmacist may refuse to sell a Schedule V substance until he is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. The name and address obtained from such identification shall be entered in the record of disposition to consumers. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, ss. 9, 15; 1977, c. 667, s. 3.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug

Authority" in the second sentence of the introductory paragraph.

§ 90-94. Schedule VI controlled substances. — This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that such substance comes within this schedule, the North Carolina Drug Commission shall find: no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physiological dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects.

The following controlled substances are included in this schedule:

1. Marijuana.
2. Tetrahydrocannabinols. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, s. 15; 1977, c. 667, s. 3.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority" in the second sentence of the introductory paragraph.

Findings Not Required as to Marijuana. —

The requirement that the Drug Authority (now Drug Commission) make findings as to whether a substance comes within this section applies only to drugs the Authority (now Commission) may wish to add, delete or reschedule, and not to substances, such as marijuana, which have already been included by the General Assembly. *State v. Dietz*, 289 N.C. 488, 223 S.E.2d 357 (1976).

In a prosecution for felonious sale and delivery of marijuana and felonious possession of marijuana with intent to sell, it is not necessary for the State to show that the Drug Authority (now Drug Commission) has made a finding that marijuana is a controlled substance since it has been listed as such under this section. *State v. Dietz*, 289 N.C. 488, 223 S.E.2d 357 (1976).

Applied in *State v. McKinney*, 288 N.C. 113, 215 S.E.2d 578 (1975).

Cited in *State v. Best*, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-95. Violations; penalties.

(d) Any person who violates G.S. 90-95(a)(3) with respect to:

- (1) A controlled substance classified in Schedule I shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars (\$5,000), or both in the discretion of the court;
- (2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars (\$2,000), or both in the discretion of the court; but if the quantity of the controlled substance, or combination of the controlled substances, exceeds 100 tablets, capsules or other dosage units, or equivalent quantity, including one-half gram or more of phencyclidine or one gram or more of cocaine, the violation shall be a felony punishable by a term of imprisonment of not more than five years or a fine of not more than five thousand dollars (\$5,000), or both, in the discretion of the court;
- (3) A controlled substance classified in Schedule V shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars (\$500.00), or both in the discretion of the court;
- (4) A controlled substance classified in Schedule VI shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars (\$100.00); but if the quantity of the controlled substance exceeds one

ounce (avoirdupois) of marijuana or one tenth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be a felony punishable by a term of imprisonment of not more than five years or a fine of not more than five thousand dollars (\$5,000), or both in the discretion of the court.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

- (1) If any person commits a felony under this Article after having been previously convicted of an offense under any law of North Carolina or any law of the United States or any other state, which offense would be punishable as a felony under this Article, he shall be sentenced to a term of imprisonment of up to twice the term otherwise prescribed or fined up to twice the fine otherwise prescribed, or both in the discretion of the court;
- (2) If any person commits a felony under this Article after having been previously convicted two or more times of offenses under any law of North Carolina or any law of the United States or any other state, which offenses would be punishable as felonies under this Article, he shall be sentenced to a term of imprisonment of not less than 10 years nor more than 30 years or fined not more than thirty thousand dollars (\$30,000), or both in the discretion of the court;
- (3) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than two years, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars (\$5,000), or both in the discretion of the court;
- (4) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than six months, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars (\$2,000), or both in the discretion of the court;
- (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by delivering a controlled substance to a person under 16 years of age shall be guilty of a felony and shall be sentenced to a term of imprisonment of not less than five years nor more than 30 years;
- (6) For the purpose of increasing punishment, previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;
- (7) If any person commits an offense under this Article for which the prescribed punishment includes only a fine, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars (\$500.00), or both in the discretion of the court.

(f) Repealed by Session Laws 1975, c. 360, s. 2, effective July 1, 1975 to July 1, 1977.

(1975, c. 360, s. 2; 1977, c. 862, ss. 1, 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, repealed subsection (f). The 1975 amendatory act expired by its own terms July 1, 1977. It is questionable whether the repealed subsection was revived by the expiration of the act.

The 1977 amendment substituted "fined not more than one hundred dollars (\$100.00)" for "sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars (\$500.00), or both in the discretion of the court" in subdivision (4) of subsection (d) and added subdivision (7) of subsection (e).

As the rest of the section was not changed by the amendments, it is not set out.

The sale of a controlled substance is a specific act and occurs only at one specific time. State v. Lankford, 31 N.C. App. 13, 228 S.E.2d 641 (1976).

The delivery of a controlled substance is a specific act and occurs only at one specific time. State v. Lewis, 32 N.C. App. 298, 231 S.E.2d 693 (1977).

However, the possession of that controlled substance with the intent to deliver it is a continuing offense from the time it was unlawfully obtained until the time the possessor divests himself of the possession. State v. Lewis, 32 N.C. App. 298, 231 S.E.2d 693 (1977).

The possession of a controlled substance with the intent to sell it is a continuing offense from the time it was unlawfully obtained until the time the possessor divests himself of the possession. State v. Lankford, 31 N.C. App. 13, 228 S.E.2d 641 (1976).

Where a licensed physician merely writes a prescription for a controlled substance listed in Schedules II, III, IV or V, and nothing more, such act is not a violation of subsection (a)(1). State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

However, if that prescription is written outside the normal course of professional practice in North Carolina and not for a legitimate medical purpose, the physician violates § 90-108. State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

When a drug is sold under circumstances which render the sale unlawful under §§ 90-71 and 90-72, there is also a violation of § 90-95 if the drug involved is a controlled substance. State v. Austin, 31 N.C. App. 20, 228 S.E.2d 507 (1976).

Types of Possession. —

In accord with original. See State v. Bagnard, 24 N.C. App. 54, 210 S.E.2d 93 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975); State

v. Finney, 290 N.C. 755, 228 S.E.2d 433 (1976); State v. Weems, 31 N.C. App. 569, 230 S.E.2d 193 (1976).

Constructive Possession Defined. —

Constructive possession of contraband material exists when there is no actual personal dominion over the material but when there is an intent and capability to maintain control and dominion over it. State v. Davis, 25 N.C. App. 181, 212 S.E.2d 516 (1975); State v. Wells, 27 N.C. App. 144, 218 S.E.2d 225 (1975).

Establishing Possession. —

In accord with 1st paragraph in original. See State v. Bagnard, 24 N.C. App. 54, 210 S.E.2d 93 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975); State v. Finney, 290 N.C. 755, 228 S.E.2d 433 (1976); State v. Weems, 31 N.C. App. 569, 230 S.E.2d 193 (1976).

In accord with 3rd paragraph in original. See State v. Finney, 290 N.C. 755, 228 S.E.2d 433 (1976).

In accord with 4th paragraph in original. See State v. Wells, 27 N.C. App. 144, 218 S.E.2d 225 (1975).

In accord with 6th paragraph in original. See State v. Bagnard, 24 N.C. App. 54, 210 S.E.2d 93 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975); State v. Finney, 290 N.C. 755, 228 S.E.2d 433 (1976).

Nothing else appearing, a man residing with his wife in an apartment, no one else residing or being present therein, may be deemed in constructive possession of marijuana located therein, notwithstanding the fact that he is temporarily absent from the apartment and his wife is present therein. State v. Baxter, 285 N.C. 735, 208 S.E.2d 696 (1974).

An accused has possession of marijuana within the meaning of this Article, when he has both the power and the intent to control its disposition or use, which power may be in him alone or in combination with another. Constructive possession is sufficient. State v. Baxter, 285 N.C. 735, 208 S.E.2d 696 (1974).

Where defendant had been given the keys and the custody of a vehicle by its owner, there were 443.1 grams of marijuana found in the car while defendant was the driver and one of the two bags of marijuana was located just inside the car's door on the driver's side, unobstructed by the seat, viewing the evidence in a light most favorable to the State, the jury could find that defendant had both the power and the intent to control its disposition or use so as to have it in his constructive possession. State v. Bagnard, 24 N.C. App. 54, 210 S.E.2d 93 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975).

An accused has possession of contraband material within the meaning of the law when he has both the power and the intent to control its disposition or use. *State v. Davis*, 25 N.C. App. 181, 212 S.E.2d 516 (1975).

Where the State relied upon several factors to show that the defendant was in constructive possession of heroin, it was not necessary for the State to prove each separate fact beyond a reasonable doubt. It is enough, if upon the whole evidence, the jury is satisfied beyond a reasonable doubt of the defendant's guilt. *State v. Davis*, 25 N.C. App. 181, 212 S.E.2d 516 (1975).

Where the expert witness testified that he had examined and identified marijuana in numerous prior cases and trials, that he examined the contents of all the envelopes taken from defendant and that the contents of each appeared to be the same and that he selected five envelopes at random, all of which, after analysis of the contents, were found to contain marijuana, this evidence was sufficient to submit to the jury on the issue of whether the contents of all the envelopes were marijuana. *State v. Hayes*, 291 N.C. 293, 230 S.E.2d 146 (1976).

Mere proximity to persons or locations, etc.—

In accord with original. See *State v. Weems*, 31 N.C. App. 569, 230 S.E.2d 193 (1976).

It is impossible to possess, etc.—

One may not possess a substance with intent to deliver it without having possession thereof. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974); *State v. Stanley*, 24 N.C. App. 323, 210 S.E.2d 496 (1974), rev'd on other grounds, 288 N.C. 19, 215 S.E.2d 589 (1975).

Establishing Intent to Distribute.—

The jury can reasonably infer an intent to distribute from the amount of the substance found, the manner in which it was packaged, and the presence of other packaging materials. *State v. Baxter*, 285 N.C. 735, 208 S.E.2d 696 (1974).

This section clearly permits North Carolina courts and juries to examine and utilize the quantities of drugs seized as one possible indicator of intent to distribute. *State v. Mitchell*, 27 N.C. App. 313, 219 S.E.2d 295 (1975), cert. denied, 289 N.C. 301, 222 S.E.2d 701 (1976).

Possession for Sale Inferred.— The quantity of narcotics found in defendant's possession, its packaging, its location and the paraphernalia for measuring and weighing are all circumstances from which it could properly be inferred that it was possessed for sale rather than for personal use. *State v. Mitchell*, 27 N.C. App. 313, 219 S.E.2d 295 (1975), cert. denied, 289 N.C. 301, 222 S.E.2d 701 (1976).

"Delivery" Means "Transfer".— In a prosecution for felonious sale and delivery of marijuana, and felonious possession of marijuana with intent to sell, trial judge's charge to the jury placing the burden on the State to

prove that defendant "transferred" the marijuana was not prejudicial error, since "delivery" means "transfer" under § 90-87. *State v. Dietz*, 289 N.C. 488, 223 S.E.2d 357 (1976).

Sale and Delivery Charged as Single Offense.— In a prosecution for felonious sale and delivery of marijuana, and felonious possession of marijuana with intent to sell, the fact that the State included in the same count as a single offense both sale and delivery, even though the two acts could have been charged as separate offenses, was not prejudicial to the defendant. *State v. Dietz*, 289 N.C. 488, 223 S.E.2d 357 (1976).

Allegations as to Transportation Surplusage.— Since January 1, 1972, the transportation of a controlled substance has not been a separate substantive criminal offense, but in any allegations charging that defendant "did feloniously possess" the controlled substance heroin and that he "did transport said substance," the allegations concerning transportation may be treated as surplusage. *State v. Rogers*, 28 N.C. App. 110, 220 S.E.2d 398 (1975).

Possession of a controlled substance and distribution, etc.—

Neither the offense of unauthorized possession nor the offense of unauthorized sale of a controlled substance is included within the other offense and one placed in jeopardy as to the one offense is not thereby placed in jeopardy as to the other. Thus, one charged with both offenses may be convicted of both and sentenced to imprisonment for each. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

Possession of heroin, etc.—

Unlawful possession of heroin and unlawful sale of the same heroin are two separate, distinct crimes, and there is no error in imposing the separate sentences therefor. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

Possession of controlled substance is lesser included offense of possession of controlled substance with intent to distribute. *State v. Stanley*, 24 N.C. App. 323, 210 S.E.2d 496 (1974), rev'd on other grounds, 288 N.C. 19, 215 S.E.2d 589 (1975).

Possession is an element of possession with intent to deliver and the unauthorized possession is, of necessity, an offense included within the charge that the defendant did unlawfully possess with intent to deliver. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974); *State v. Stanley*, 24 N.C. App. 323, 210 S.E.2d 496 (1974), rev'd on other grounds, 288 N.C. 19, 215 S.E.2d 589 (1975).

One may unlawfully sell a controlled substance which he lawfully possesses. *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

Finding of Marijuana to Be a Controlled Substance Not Required.— In a prosecution for

felonious sale and delivery of marijuana and felonious possession of marijuana with intent to sell, it is not necessary for the State to show that the Drug Authority (now Commission) has made a finding that marijuana is a controlled substance since it has been listed as such under § 90-94. *State v. Dietz*, 289 N.C. 488, 223 S.E.2d 357 (1976).

Qualified chemist's identification of green vegetable material as marijuana constituted sufficient showing by the State that it was *Cannabis sativa* L., a controlled substance under this section. *State v. Bell*, 24 N.C. App. 430, 210 S.E.2d 905 (1975).

Subsection (g) of this section does not deprive a juvenile of the right of confrontation and cross-examination, although the juvenile has no right of appeal to the superior court for trial de novo where he could cross-examine the SBI chemist who prepared the report, since the juvenile is afforded a right of access to the report in ample time to prepare for trial and has the right to subpoena the person who prepared the report. *In re Arthur*, 27 N.C. App. 227, 218 S.E.2d 869, cert. granted, 288 N.C. 730, 220 S.E.2d 621 (1975).

Subsection (g) was not intended to apply to proceedings which result in adjudications of delinquency in the district court. *In re Arthur*, 291 N.C. 640, 231 S.E.2d 614 (1977).

Verdict and Judgment. —

Where there was nothing in the record to indicate that the defendants had been convicted

previously of a violation of subsection (d), the recital in the judgments that the defendants were found guilty of a felony as a result of possession of phencyclidine hydrochloride was erroneous, and the judgments were modified by striking the word "felony" as it related to the conviction of the defendants for simple possession of phencyclidine hydrochloride. *State v. Gagne*, 22 N.C. App. 615, 207 S.E.2d 384, cert. denied, 285 N.C. 761, 209 S.E.2d 285 (1974).

Punishment. —

The trial court erred in sentencing defendant to imprisonment for 10 years for felonious possession of heroin where the indictment did not charge defendant with a prior conviction of that offense and the State did not prove a prior conviction, a sentence of five years being the maximum that could be imposed in such case. *State v. Moore*, 27 N.C. App. 245, 218 S.E.2d 496 (1975).

Applied in *State v. Carriker*, 287 N.C. 530, 215 S.E.2d 134 (1975); *State v. Battle*, 26 N.C. App. 478, 216 S.E.2d 458 (1975); *State v. Hardy*, 31 N.C. App. 67, 228 S.E.2d 487 (1976); *State v. Vinson*, 31 N.C. App. 318, 229 S.E.2d 203 (1976); *State v. Gillespie*, 31 N.C. App. 520, 230 S.E.2d 154 (1976).

Quoted in *State v. Reese*, 33 N.C. App. 89, 234 S.E.2d 41 (1977).

Cited in *State v. Crews*, 286 N.C. 41, 209 S.E.2d 462 (1974); *State v. Chapman*, 24 N.C. App. 462, 211 S.E.2d 489 (1975).

§ 90-95.2. Cooperation between law-enforcement agencies. — (a) The head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the provisions of this Article if so requested in writing by the head of the other agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the other agency (including in an undercover capacity) and lending equipment and supplies. While working with another agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities as the officers of the requesting agency in addition to those he normally possesses. While on duty with the other agency, he shall be subject to the lawful operational commands of his superior officers in the other agency, but he shall for personnel and administrative purposes remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workmen's compensation when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

- (1) "Head" means any director or chief officer of a law-enforcement agency, including the chief of police of a local police department and the sheriff of a county, or an officer of the agency to whom the head of the agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.
- (2) "Law-enforcement agency" means any State or local agency, force, department, or unit responsible for enforcing criminal laws in this State, including any local police department or sheriff's department.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers. (1975, c. 782, s. 1.)

§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases. — When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction. (1975, c. 782, s. 2.)

Quoted in *Shore v. Edmisten*, 290 N.C. 628,
227 S.E.2d 553 (1976).

§ 90-96. Conditional discharge and expunction of records for first offense.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
- (3) Affidavits of the clerk of superior court, chief of police, where appropriate, sheriff of the county wherein the petitioner was convicted, and official records of the Federal Bureau of Investigation and the State Bureau of Investigation, all showing that the applicant has not been convicted of a felony or misdemeanor under the laws of the United States or the laws of this State or any other state at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The

State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the North Carolina Department of Human Resources, the names of all persons convicted under this Article, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(1975, c. 650, ss. 1, 2; 1977, c. 642, s. 2; c. 667, s. 3.)

Editor's Note. —

The 1975 amendment, effective Oct. 1, 1975, substituted "Administrative Office of the Courts" for "North Carolina Department of Justice" in the present first paragraph of subsection (b) and in two places in the second sentence of subsection (c) and substituted "North Carolina Drug Authority" for "North Carolina Department of Justice" in the first sentence of subsection (c).

The first 1977 amendment, in subsection (b), made the provisions of the former first sentence the first sentence of the present first paragraph and the provisions of the former second through fourth sentences the first through third sentences of the present second paragraph, added the second sentence of the present first paragraph, substituted "was entered" for "has been entered" in the third sentence of the second paragraph, and added the third paragraph.

The second 1977 amendment, effective July 1, 1977, substituted "Department of Human Resources" for "Drug Authority" in the first sentence of subsection (c).

Session Laws 1975, c. 650, s. 6, provides: "All expunction records presently maintained in the North Carolina Department of Justice in accordance with G.S. 90-96, G.S. 90-113.14 and G.S. 15-223 will be transferred to the Administrative Office of the Courts at the time this act becomes effective. All files containing the names of all persons convicted under Article 5 and 5A of Chapter 90 of the General Statutes will be transferred to the North Carolina Drug Authority at the time this act becomes effective."

As subsections (a) and (d) were not changed by the amendments, they are not set out.

Cited in *Shore v. Edmisten*, 290 N.C. 628, 227 S.E.2d 553 (1976).

§ 90-96.1. Immunity from prosecution for minors.

Quoted in *State v. Best*, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-99. Republishing of schedules. — The North Carolina Department of Human Resources shall update and republish the schedules established by this Article on a semiannual basis for two years from January 1, 1972, and thereafter on an annual basis. (1971, c. 919, s. 1; 1977, c. 667, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Human Resources" for "Drug Authority."

§ 90-100. Rules and regulations. — The North Carolina Drug Commission is authorized to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this State. (1971, c. 919, s. 1; 1977, c. 667, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority."

Stated in *State v. Best*, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-101. Annual registration to manufacture, etc., controlled substances generally; effect of registration; exceptions; waiver; inspection. — (a) Every person who manufactures, distributes, dispenses or conducts research with any controlled substance within this State or who proposes to engage in the manufacture, distribution, dispensing of, or the conduct of research with any controlled substance within this State, shall obtain annually a registration issued by the North Carolina Department of Human Resources in accordance with rules and regulations promulgated by the North Carolina Drug Commission.

(b) Persons registered by the North Carolina Department of Human Resources under this Article (including research facilities) to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of this Article:

- (1) An agent, or an employee thereof, of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his business or employment;
- (2) A common or contract carrier, or public warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment;
- (3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner;
- (4) Repealed by Session Laws 1977, c. 891, s. 4.
- (5) Any law-enforcement officer acting within the course and scope of official duties, or any person employed in an official capacity by, or acting as an agent of, any law-enforcement agency or other agency charged with enforcing the provisions of this Article when acting within the course and scope of official duties.

(d) The North Carolina Drug Commission may, by regulation, waive the requirement for registration of certain classes of manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration shall be required at each principal place of business, research or professional practice where the registrant manufactures, distributes, dispenses or uses controlled substances.

(f) The North Carolina Department of Human Resources is authorized to inspect the establishment of a registrant, applicant for registration, or practitioner in accordance with rules and regulations promulgated by the North Carolina Drug Commission.

(g) Practitioners licensed in North Carolina by their respective licensing boards may possess, dispense or administer controlled substances to the extent authorized by law and by their boards. (1971, c. 919, s. 1; 1973, c. 1358, s. 12; 1977, c. 667, s. 3; c. 891, s. 4.)

Editor's Note. —

The first 1977 amendment, effective July 1, 1977, substituted "by the North Carolina Department of Human Resources in accordance with rules and regulations promulgated by the North Carolina Drug Commission" for "by the North Carolina Drug Authority in accordance with the rules and regulations promulgated by

it" at the end of subsection (a), substituted "Department of Human Resources" for "Drug Authority" near the beginning of subsections (b) and (f), substituted "Drug Commission" for "Drug Authority" near the beginning of subsection (d) and substituted "North Carolina Drug Commission" for "it" at the end of subsection (f).

The second 1977 amendment deleted "dangerous" preceding "substance within the State" in subsection (a), deleted subdivision (4) of subsection (c), which read "Practitioners licensed in North Carolina by their respective

licensing boards under Articles 1, 2, 4, 6, 11 and 12 of this Chapter," and added subsection (g).

Applied in State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-102. Additional provisions as to registration. — (a) The North Carolina Department of Human Resources shall register an applicant to manufacture or distribute controlled substances included in Schedules I through VI of this Article unless it determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

- (1) Maintenance of effective controls against diversion of any controlled substances and any substance compounded therefrom into other than legitimate medical, scientific, or industrial channels;
- (2) Compliance with applicable federal, State and local law;
- (3) Prior conviction record of applicant, its agents or employees under federal and State laws relating to the manufacture, distribution, or dispensing of such substances;
- (4) Past experience in the manufacture of controlled substances, and the existence in the establishment or facility of effective controls against diversion; and
- (5) Any factor relating to revocation, suspension, or denial of past registrations, licenses, or applications under this or any other State or federal law;
- (6) Such other factors as may be relevant to and consistent with the public health and safety.

(b) Registration granted under subsection (a) of this section shall not entitle a registrant to manufacture and distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Individual practitioners licensed to dispense and authorized to conduct research under federal law with Schedules II through V substances must be registered with the North Carolina Department of Human Resources to conduct such research. The North Carolina Department of Human Resources need not require separate registration under this Article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with the substances of Schedules I and VI of this Article may conduct research with Schedules I and VI substances within this State by registering with the North Carolina Department of Human Resources upon furnishing evidence of said federal registration.

(d) Manufacturers, distributors and research facilities registered or licensed under federal law to manufacture, distribute or do research on controlled substances included in Schedules I through VI of this Article shall be entitled to registration under this Article, but such registration is expressly made subject to the provisions of G.S. 90-103. Research facilities registered under federal law to conduct research with Schedules I and VI controlled substances may conduct research with Schedules I and VI controlled substances within this State upon furnishing the North Carolina Department of Human Resources evidence of that federal registration.

(e) The North Carolina Department of Human Resources shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any substances prior to January 1, 1972, and who are registered or licensed by the State. (1971, c. 919, s. 1; 1973, c. 1358, s. 14; 1977, c. 667, s. 3.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Human Resources" for "Drug Authority" throughout the section.

Cited in *State v. Best*, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-103. Revocation or suspension of registration. — (a) A registration under G.S. 90-102 to manufacture, distribute, or dispense a controlled substance, may be suspended or revoked by the North Carolina Drug Commission upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this Article;
- (2) Has been convicted of a felony under any State or federal law relating to any controlled substance; or
- (3) Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(b) The North Carolina Drug Commission may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the North Carolina Drug Commission shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the North Carolina Drug Commission at a time and place not less than 30 days after the date of service of the order, but in the case of a denial or renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with rules and regulations of the North Carolina Drug Commission required by Chapter 150[A] of the General Statutes, and subject to judicial review as provided in Chapter 150[A] of the General Statutes. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this Article or any law of the State.

(d) The North Carolina Drug Commission may suspend, without an order to show cause, any registration simultaneously with the institutions of proceedings under this section, or where renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the North Carolina Drug Commission, or dissolved by a court of competent jurisdiction.

(e) In the event the North Carolina Drug Commission suspends or revokes a registration granted under G.S. 90-102, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the North Carolina Drug Commission be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be ordered forfeited to the State.

(f) The Bureau shall promptly be notified of all orders suspending or revoking registration. (1971, c. 919, s. 1; 1973, c. 1331, s. 3; 1977, c. 667, s. 3.)

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

The 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority" throughout the section.

§ 90-104. Records of registrants or practitioners. — Each registrant or practitioner manufacturing, distributing, or dispensing controlled substances under this Article shall keep records and maintain inventories in conformance with the record-keeping and the inventory requirements of the federal law and shall conform to such rules and regulations as may be promulgated by the North Carolina Drug Commission. (1971, c. 919, s. 1; 1977, c. 667, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Drug

Commission" for "Drug Authority" at the end of the section.

§ 90-105. Order forms.

Quoted in State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-106. Prescriptions and labeling.

(b) In emergency situations, as defined by rule of the North Carolina Drug Commission, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the dispensing agent. Prescriptions shall be retained in conformity with the requirements of G.S. 90-104. No prescription for a Schedule II substance may be refilled.

(f) No controlled substance shall be dispensed or distributed in this State unless such substance shall be in a container clearly labeled in accord with regulations lawfully adopted and published by the federal government or the North Carolina Drug Commission.

(i) A manufacturer's sales representative may distribute a controlled substance as a complimentary sample only upon the written request of a practitioner. Such request must be made on each distribution and must contain the names and addresses of the supplier and the requester and the name and quantity of the specific controlled substance requested. The manufacturer shall maintain a record of each such request for a period of two years. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, s. 15; 1975, c. 572; 1977, c. 667, s. 3.)

Editor's Note. —

The 1975 amendment added subsection (i).

The 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority" in subsections (b) and (f).

As the rest of the section was not changed by the amendments, only subsections (b), (f) and (i) are set out.

Under subsection (a) a physician may lawfully prescribe drugs only through a written prescription. State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

Where a physician prescribes Schedule II controlled drugs, not in the normal course of professional practice in this State, he is acting unlawfully and in violation of subsection (a). State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

Legitimate Medical Purpose Standard Incorporated Into Prescription Requirements of Subsections (a) and (c). — It is inconceivable that the legislature would have imposed tighter strictures on the dispensing of the less dangerous Schedule V drugs than it imposed on the dispensing of the drugs listed in Schedules II, III and IV. It is reasonable to assume that the legislature intended all controlled substances to be dispensed only for legitimate medical purposes and it felt no need specifically to enunciate such a standard for Schedules II, III and IV drugs as it had already incorporated the legitimate medical purpose standard into the prescription requirement of subsections (a) and (c). State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-107. Prescriptions, stocks, etc., open to inspection by officials. — Prescriptions, order forms and records, required by this Article, and stocks of controlled substances included in Schedules I through VI of this Article shall be open for inspection only to federal and State officers, whose duty it is to enforce the laws of this State or of the United States relating to controlled substances included in Schedules I through VI of this Article, and to authorized employees of the North Carolina Department of Human Resources. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge other than to other law-enforcement officials or agencies, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (1971, c. 919, s. 1; 1973, c. 1358, s. 13; 1977, c. 667, s. 3.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Human Resources"

for "Drug Authority" at the end of the first sentence.

§ 90-108. Prohibited acts; penalties.

When Writing of Prescription by Physician Violates Section. — Where a licensed physician writes a prescription for a controlled substance listed in Schedules II, III, IV or V, and that prescription is written outside the normal course of professional practice in North Carolina and

not for a legitimate medical purpose, the physician violates this section. *State v. Best*, 292 N.C. 294, 233 S.E.2d 544 (1977).

Applied in *State v. Booze*, 29 N.C. App. 397, 224 S.E.2d 298 (1976); *State v. Austin*, 31 N.C. App. 20, 228 S.E.2d 507 (1976).

§ 90-109. Nonprofessional treatment. — (a) Any person other than a practitioner, who holds himself out to the public, or any part of it, as being a drug treatment facility, or being able or available to treat, give shelter or comfort to, including telephone crisis services (hotlines), or who proposes to do any of the foregoing to or for any person using, under the influence of, or experiencing the effects of a controlled substance, included in Schedules I through VI of this Article shall first be licensed by the North Carolina Department of Human Resources as a drug treatment facility in accordance with rules and regulations adopted by the North Carolina Drug Commission.

(b) A license required by this section shall be obtained from the North Carolina Department of Human Resources and may be in the form of a letter from the North Carolina Department of Human Resources, signed by the Secretary of the North Carolina Department of Human Resources to the person applying for the license. A license as required by this section shall not be transferable, shall be prominently displayed at the place where treatment, shelter or comfort are afforded, and shall bear such reasonable restrictions, including duration, as the North Carolina Department of Human Resources may impose on it. A license application as required by this section need not be in any special form, but must disclose the essential plan of operation of the proposed drug treatment facility, the names and qualifications of all persons agreeing to provide professional medical services, paramedical or associated services, and the identity and qualifications of the supervisory and adult persons who will be available at the place of the proposed drug treatment facility.

(c) The North Carolina Department of Human Resources shall not issue a drug treatment facility license to an applicant until it shall satisfy itself that professional and competent medical services are at all times available to the applicant at the drug treatment facility, that a responsible adult will be present or immediately available to the applicant at all times at the drug treatment facility, and that the applicant will make a positive contribution toward

controlling drug dependence and assisting drug dependent persons. The North Carolina Department of Human Resources may deny license applications of proposed or existing drug treatment facilities if it finds there are reasonable grounds for belief that issuance of the license would be inconsistent with the safety of the public or with the application of law. A decision of the North Carolina Department of Human Resources to deny or revoke a drug treatment facility license may be appealed to the North Carolina Drug Commission in accordance with rules and regulations adopted by the Commission.

(d) A license granted under this section shall not in any way alter or reduce the liability of the licensee, its agents or employees, voluntary or compensated, with respect to any phase of its operations.

(e) Violation of this section shall be a misdemeanor. (1971, c. 919, s. 1; 1973, c. 1361; 1977, c. 667, s. 3.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Human Resources" for "Drug Authority" throughout the section, added at the end of subsection (a) "in accordance

with rules and regulations adopted by the North Carolina Drug Commission," substituted "Secretary" for "Director" in the first sentence of subsection (b) and added the last sentence of subsection (c).

§ 90-109.1. Treatment.

(c) Every practitioner that provides treatment or rehabilitation services to a person dependent upon drugs shall periodically as required by the Secretary of the North Carolina Department of Human Resources commencing January 1, 1972, make a statistical report to the Secretary of the North Carolina Department of Human Resources in such form and manner as the Secretary shall prescribe for each such person treated or to whom rehabilitation services were provided. The form of the report prescribed shall be furnished by the Secretary of the North Carolina Department of Human Resources. Such report shall include the number of persons treated or to whom rehabilitation services were provided; the county of such person's legal residence; the age of such person; the number of such persons treated as inpatients and the number treated as outpatients; the number treated who had received previous treatment or rehabilitation services; and any other data required by the Secretary. If treatment or rehabilitation services are provided to a person by a hospital, public agency, or drug treatment facility, such hospital, public agency, or drug treatment facility shall coordinate with the treating medical practitioner so that statistical reports required in this section shall not duplicate one another. The Secretary shall cause all such reports to be compiled into periodical reports which shall be a public record. (1971, c. 919, s. 1; 1977, c. 667, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Human Resources" for "Drug Authority" and "Secretary" for "Director" throughout subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 90-111. Cooperative arrangements. — The North Carolina Department of Human Resources and the Attorney General of North Carolina shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they are authorized to:

- (1) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;
- (2) Coordinate and cooperate in training programs on controlled substances for law enforcement at the local and State levels;

- (3) Cooperate with the Bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the State, and make such information available for federal, State, and local law-enforcement purposes. Provided that neither the Attorney General of North Carolina, the North Carolina Department of Human Resources nor any other State officer or agency shall be authorized to accept or file, or give out the names or other form of personal identification of drug-dependent persons who voluntarily seek treatment or assistance related to their drug dependency. (1971, c. 919, s. 1; 1977, c. 667, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Human Resources" for "Drug Authority" in two places.

§ 90-112. Forfeitures.

Owner of a motor vehicle seized under the provisions of this section from a legal possessor of such motor vehicle does not have standing to intervene and petition for return of his vehicle as he does under the provisions of

G.S. 18A-21. Opinion of Attorney General to Honorable Robert Rouse, 44 N.C.A.G. 262 (1975).

Cited in *State v. Rogers*, 28 N.C. App. 110, 220 S.E.2d 398 (1975).

§ 90-112.1. Remission or mitigation of forfeitures; possession pending trial. — (a) Whenever, in any proceeding in court for a forfeiture, under G.S. 90-112 of any conveyance seized for a violation of this Article the court shall have exclusive jurisdiction to continue, remit or mitigate the forfeiture.

(b) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (i) that he has an interest in such conveyance, as owner or otherwise, which he acquired in good faith; (ii) that he had no knowledge, or reason to believe, that it was being or would be used in the violation of laws of this State relating to controlled substances; (iii) that his interest is in an amount in excess or equal to the fair market value of such conveyance.

(c) If the court, in its discretion, allows the remission or mitigation the conveyance shall be returned to the claimant; and should there be joint request of any two or more claimants, whose claims are allowed, the court shall order the return of the conveyance to such of the joint requesting claimants as have the prior claim on lien. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the State. In all other cases the court shall order disposition of such conveyance as provided in G.S. 90-112, and after satisfaction of the expenses of the sale, and such claims as may be approved by the court, the funds shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in which said vehicle was seized.

(d) If the court should determine that the conveyance should be held for purposes of evidence, then it may order the vehicle to be held until the case is heard. (1975, c. 601.)

§ 90-113.1. Burden of proof; liabilities.

Prosecution of Agent of Officer. — It would violate every precept of fair play and fundamental justice to allow a law-enforcement officer to benefit from this section's protection

and at the same time prosecute his youthful agent, who at his insistence violated the provisions of the act. *State v. Stanley*, 288 N.C. 19, 215 S.E.2d 589 (1975).

§ 90-113.2. Judicial review. — All final determinations, findings, and conclusions of the North Carolina Drug Commission under this Article shall be final and conclusive decisions of the matters involved, except that any person aggrieved by such decision may obtain review of the decision as provided in Chapter 150[A] of the General Statutes. Findings of fact by the North Carolina Drug Commission, if supported by substantial evidence, shall be conclusive. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1331, s. 3; 1977, c. 667, s. 3; c. 891, s. 5.)

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

The first 1977 amendment, effective July 1, 1977, substituted "Drug Commission" for "Drug Authority" in two places.

The second 1977 amendment deleted "or the North Carolina Commission for Health Services" following "North Carolina Drug Commission" in the first and second sentences.

§ 90-113.3. Education and research.

(c) The North Carolina Department of Human Resources is authorized and directed to encourage research on misuse and abuse of controlled substances. In connection with such research and in furtherance of the enforcement of this Article, it is authorized to:

- (1) Establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse;
- (2) Make studies and undertake programs of research to:
 - a. Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this Article;
 - b. Determine patterns of misuse and abuse of controlled substances and the social effect thereof; and
 - c. Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances.
- (3) Enter into contracts with other public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(d) The North Carolina Department of Human Resources may enter into contracts for research activities related to controlled substances, and the North Carolina Department of Public Instruction and the Board of Governors of the University of North Carolina or either of them may enter into contracts for educational activities related to controlled substances, without performance bonds.

(e) The North Carolina Department of Human Resources may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any State civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

(f) The North Carolina Department of Human Resources may authorize persons engaged in research to possess and distribute controlled substances in accordance with such restrictions as the authorization may impose. Persons who obtain this authorization shall be exempt from State prosecution for possession and distribution of controlled substances to the extent authorized by the North Carolina Department of Human Resources. (1971, c. 919, s. 1; c. 1244, s. 14; 1973, c. 476, s. 128; 1977, c. 667, s. 3.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Human Resources" for "Drug Authority" in the first sentence of subsection (c) and in subsections (d), (e) and (f) and deleted "with the North Carolina

Department of Human Resources" following "contracts" near the beginning of subdivision (3) of subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 90-113.4. Possession of hypodermic syringes and needles regulated.

Applied in *State v. Hart*, 33 N.C. App. 235, 234 S.E.2d 430 (1977).

§ 90-113.4A. Rendering inoperable of hypodermic syringes and needles required before discarding. — (a) It shall be unlawful for any firm, organization, corporation, hospital, medical clinic, their agents or employees to discard a hypodermic syringe or needle unless such instrument is first rendered inoperable for future use; provided that this section shall not apply to the discarding of such instruments after personal use by individuals who are under the care of a physician, and further provided that this section shall not apply to the discarding of such instruments after use for the treatment of livestock.

(b) Violation of this section shall be a misdemeanor. (1977, c. 907, s. 1.)

Editor's Note. — Session Laws 1977, c. 907, s. 2, makes this section effective Jan. 1, 1978.

ARTICLE 5A.***North Carolina Toxic Vapors Act.*****§ 90-113.14. Conditional discharge and expunction of records for first offenses.**

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
- (3) Affidavits of the clerk of superior court, chief of police, where appropriate, sheriff of the county wherein the petitioner was convicted, and official records of the Federal Bureau of Investigation and the State Bureau of Investigation, all showing that the applicant has not been convicted of a felony or misdemeanor under the laws of the United States or the laws of this State or any other state at any time prior to the conviction for the misdemeanor in question or during the period of

probation following the decision to defer further proceedings on the misdemeanor in question.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the North Carolina Drug Authority, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge. (1971, c. 1078; 1975, s. 650, ss. 3, 4; 1977, c. 642, s. 3.)

Editor's Note. — The 1975 amendment, effective Oct. 1, 1975, substituted "Administrative Office of the Courts" for "North Carolina Department of Justice" in the present first paragraph of subsection (b) and in two places in the second sentence of subsection (c) and substituted "North Carolina Drug Authority" for "North Carolina Department of Justice" in the first sentence of subsection (c).

The 1977 amendment, in subsection (b), made the provisions of the former first sentence the first sentence of the present first paragraph and the provisions of the former second through fourth sentences the first through third sentences of the present second paragraph, substituted "finding of guilty" for "finding of guilt" in the first sentence of the present first paragraph, added the second sentence of the

present first paragraph, substituted "was entered" for "has been entered" in the third sentence of the present second paragraph, and added the third paragraph.

Session Laws 1975, c. 650, s. 6, provides: "All expunction records presently maintained in the North Carolina Department of Justice in accordance with G.S. 90-96, G.S. 90-113.14 and G.S. 15-223 will be transferred to the Administrative Office of the Courts at the time this act becomes effective. All files containing the names of all persons convicted under Articles 5 and 5A of Chapter 90 of the General Statutes will be transferred to the North Carolina Drug Authority at the time this act becomes effective."

As subsection (a) was not changed by the amendments, it is not set out.

ARTICLE 6.

Optometry.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-114. Optometry defined. — Any one or any combination of the following practices shall constitute the practice of optometry:

- (1) The examination of the human eye by any method, other than surgery, to diagnose, to treat, or to refer for consultation or treatment any abnormal condition of the human eye and its adnexa; or
- (2) The employment of instruments, devices, pharmaceutical agents and procedures, other than surgery, intended for the purposes of investigating, examining, treating, diagnosing or correcting visual defects or abnormal conditions of the human eye or its adnexa; or
- (3) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

Provided, however, in using or prescribing pharmaceutical agents, other than topical pharmaceutical agents within the definition hereinabove set out which are used for the purpose of examining the eye, the optometrist so using or prescribing shall communicate and collaborate with a physician duly licensed to practice medicine in North Carolina designated or agreed to by the patient. (1909, c. 444, s. 1; C. S., s. 6687; 1923, c. 42, s. 1; 1977, c. 482, s. 1.)

Editor's Note. —

The 1977 amendment, effective on and after July 1, 1977, rewrote this section. Session Laws 1977, c. 482, s. 7, provides: "The provisions of this act are applicable only to those individuals

licensed pursuant thereto and shall not restrict, expand, or otherwise alter those other practices or acts governed by Chapter 90 of the General Statutes."

§ 90-115.1. Acts not constituting the unlawful practice of optometry. — In addition to the exemptions from this Article otherwise existing the following acts or practices shall not constitute the unlawful practice of optometry:

- (1) The practice of optometry, in the discharge of their official duties, by optometrists in any branch of the military service of the United States or in the full employ of any agency of the United States.
- (2) The teaching of optometry, in optometry schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Examiners in Optometry, by any person or persons licensed to practice optometry anywhere in the United States or in any country, territory or other recognized jurisdiction; provided, however, that such teaching of optometry by any person or persons licensed in any jurisdiction other than a place in the United States must first be

approved by the North Carolina State Board of Examiners in Optometry.

- (3) The practice of optometry in optometry schools or colleges in this State approved by the North Carolina State Board of Examiners in Optometry by students enrolled in such schools or colleges when such practice is performed as a part of their course of instruction and is under the supervision of an optometrist who is either duly licensed in North Carolina or qualified under subdivision (2) above as a teacher. Additionally, the practice of optometry by such students at any location upon patients or inmates of institutions wholly owned or operated by the State of North Carolina or any political subdivision or subdivisions thereof when, in the opinion of the dean of such optometry school or college or his designee, the student's optometric education and experience is adequate therefor, subject to review and approval by the said Board of Examiners in Optometry, and such practice is a part of the course of instruction of such students, is performed under the supervision of a duly licensed optometrist acting as a teacher or instructor and is without remuneration except for expenses and subsistence as defined and permitted by the rules and regulations of said Board of Examiners in Optometry.
- (4) The temporary practice of optometry by licensed optometrists of another state or of any territory or country when the same is performed, as clinicians, at meetings or organized optometric societies, associations, colleges or similar optometric organizations, or when such optometrists appear in emergency cases upon the specific call of and in consultation with an optometrist duly licensed to practice in this State.
- (5) The practice of optometry by a person who is a graduate of an optometric school or college approved by the North Carolina State Board of Examiners in Optometry and who is not licensed to practice optometry in this State, when such person is the holder of a valid intern permit, or provisional license, issued to him by the North Carolina State Board of Examiners in Optometry pursuant to the terms and provisions of this Article, and when such practice of optometry complies with the conditions of said intern permit, or provisional license.
- (6) Any act or acts performed by an optometric assistant or technician to an optometrist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board.
- (7) Optometric assisting and related functions as a part of their instructions by optometric assistant students enrolled in a course conducted in this State and approved by the Board, when such functions are performed under the supervision of an optometrist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of optometry pursuant to the provisions of subdivision (2) above. (1975, c. 733.)

§ 90-118. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses; educational requirements for prescription and use of pharmaceutical agents.

(c) The North Carolina State Board of Examiners in Optometry is authorized to conduct both written or oral and clinical examinations of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant a license to any person who, in its discretion, is found deficient in said examination, or to any person guilty of cheating, deception, or fraud during such examination, or whose examination discloses, to the satisfaction of the Board, a deficiency in academic education. The Board may employ such optometrists found qualified

therefor by the Board in examining applicants for licenses as it deems appropriate.

(e) The Board shall not license any person to practice optometry in the State of North Carolina beyond the scope of the person's educational training as determined by the Board. No optometrist presently licensed in this State shall prescribe and use pharmaceutical agents in the practice of optometry unless and until he (i) has submitted to the Board evidence of satisfactory completion of all educational requirements established by the Board to prescribe and use pharmaceutical agents in the practice of optometry and (ii) has been certified by the Board as educationally qualified to prescribe and use pharmaceutical agents.

Provided, however, that no course or courses in pharmacology shall be approved by the Board unless (i) taught by an institution having facilities for both the didactic and clinical instruction in pharmacology and which is accredited by a regional or professional accrediting organization that is recognized and approved by the Council on Postsecondary Accreditation or the United States Office of Education and (ii) transcript credit for the course or courses is certified to the Board by the institution as being equivalent in both hours and content to those courses in pharmacology required by the other licensing boards in this Chapter whose licensees or registrants are permitted the use of pharmaceutical agents in the course of their professional practice. (1909, c. 444, s. 5; 1915, c. 21, ss. 2, 3, 4; C. S., s. 6691; 1923, c. 42, ss. 2, 3; 1935, c. 63; 1949, c. 357; 1959, c. 464; 1973, c. 800, s. 7; 1975, c. 19, s. 23; 1977, c. 482, s. 2.)

Editor's Note. —

The 1975 amendment corrected an error in the 1973 act by inserting "a" preceding "license" in the first sentence of subsection (c).

The 1977 amendment, effective on and after July 1, 1977, added subsection (e). Session Laws 1977, c. 482, s. 7, provides: "The provisions of this act are applicable only to those individuals

licensed pursuant thereto and shall not restrict, expand, or otherwise alter those other practices or acts governed by Chapter 90 of the General Statutes."

As the rest of the section was not changed by the amendments, only subsections (c) and (e) are set out.

§ 90-118.10. Annual renewal of licenses. — Since the laws of North Carolina now in force provided for the annual renewal of any license issued by the North Carolina State Board of Examiners in Optometry, it is hereby declared to be the policy of this State that all licenses heretofore issued by the North Carolina State Board of Examiners in Optometry, or hereafter issued by said Board are subject to annual renewal and the exercise of any privilege granted by any license heretofore issued or hereafter issued by the North Carolina State Board of Examiners in Optometry is subject to the issuance on or before the first day of January of each year of a certificate of renewal of license.

On or before the first day of January of each year, each optometrist engaged in the practice of optometry in North Carolina shall make application to the North Carolina State Board of Examiners in Optometry and receive from said Board, subject to the further provisions of this section and of this Article, a certificate of renewal of said license.

The application shall show the serial number of the applicant's license, his full name, address and the county in which he has practiced during the preceding year, the date of the original issuance of license to said applicant and such other information as the said Board from time to time may prescribe by regulation.

If the application for such renewal certificate, accompanied by the fee required by this Article, is not received by the Board before January 31 of each year, an additional fee of ten dollars (\$10.00) shall be charged for renewal certificate. If such application accompanied by the renewal fee is not received by the Board before March 31 of each year, every person thereafter continuing to practice optometry without having applied for a certificate of renewal shall be guilty of the unauthorized practice of optometry and shall be subject to the penalties prescribed by G.S. 90-118.11.

In issuing a certificate of renewal, the Board shall expressly state whether such person, otherwise licensed in the practice of optometry, has been certified to prescribe and use pharmaceutical agents. (1973, c. 800, s. 17; c. 1092, s. 1; 1977, c. 482, s. 3.)

Editor's Note. —

The 1977 amendment, effective on and after July 1, 1977, added the fifth paragraph. Session Laws 1977, c. 482, s. 7, provides: "The provisions of this act are applicable only to those

individuals licensed pursuant thereto and shall not restrict, expand, or otherwise alter those other practices or acts governed by Chapter 90 of the General Statutes."

§ 90-118.11. Unauthorized practice; penalty. — If any person shall practice or attempt to practice optometry in this State without first having passed the examination and obtained a license from the North Carolina State Board of Examiners in Optometry; or without having obtained a provisional license from said Board; or if he shall practice optometry after March 31 of each year without applying for a certificate of renewal of license, as provided in G.S. 90-118.10; or shall practice or attempt to practice optometry while his license is revoked, or suspended, or when a certificate of renewal of license has been refused; or shall practice or attempt to practice optometry by means or methods that the Board has determined is beyond the scope of the person's educational training; or shall violate any of the provisions of this Article for which no specific penalty has been provided; or shall practice, or attempt to practice, optometry in violation of the provisions of this Article; or shall practice optometry under any name other than his own name, said person shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or imprisonment, or both, in the discretion of the court. Each day's violation of this Article shall constitute a separate offense. (1973, c. 800, s. 18; 1977, c. 482, s. 4.)

Editor's Note. — The 1977 amendment, effective on and after July 1, 1977, inserted "or shall practice or attempt to practice optometry by means or methods that the Board has determined is beyond the scope of the person's educational training" near the middle of the first sentence. Session Laws 1977, c. 482, s. 7,

provides: "The provisions of this act are applicable only to those individuals licensed pursuant thereto and shall not restrict, expand, or otherwise alter those other practices or acts governed by Chapter 90 of the General Statutes."

§ 90-121.3. Hearings.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-127.2. Filling prescriptions. — Legally licensed druggists of this State may fill prescriptions of optometrists duly licensed by the North Carolina State Board of Examiners in Optometry to prescribe, apply or use pharmaceutical agents. (1977, c. 482, s. 5.)

Editor's Note. — Session Laws 1977, c. 482, s. 8, makes this section effective on and after July 1, 1977.

Session Laws 1977, c. 482, s. 7, provides: "The provisions of this act are applicable only to those

individuals licensed pursuant thereto and shall not restrict, expand, or otherwise alter those other practices or acts governed by Chapter 90 of the General Statutes."

ARTICLE 7.

Osteopathy.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-136. Refusal, revocation or suspension of license; misdemeanors.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 8.

Chiropractic.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-143. Definitions of chiropractic; examinations; educational requirements. — Chiropractic is herein defined to be the science of adjusting the cause of disease by realigning the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body. It shall be the duty of the North Carolina State Board of Chiropractic Examiners (hereinafter referred to as "Board") to examine for license to practice chiropractic every applicant who complies with the following provisions: He shall, before he is admitted to examination, furnish proof of good moral character and satisfy the Board that he has completed two years of prechiropractic college education and received credits for a minimum of 60 semester hours. He shall exhibit a diploma or furnish proof of graduation from a chiropractic college accredited by the Council on Chiropractic Education or

holding recognized candidate for accreditation status with the Council on Chiropractic Education or a college teaching chiropractic that, in the Board's opinion, meets the equivalent standards established by the Council on Chiropractic Education, requiring an attendance of not less than four academic years, and supplying such facilities for clinical and scientific instruction, as shall meet the approval of the Board. The examination shall include but not be limited to the following studies: neurology, chemistry, pathology, anatomy, histology, physiology, embryology, dermatology, diagnosis, microscopy, gynecology, hygiene, eye, ear, nose and throat, orthopody, diagnostic radiology, jurisprudence, palpation, nerve tracing, chiropractic philosophy, theory, teaching and practice of chiropractic.

Provided further, that the said Board may license by reciprocity, upon application, any chiropractor holding a license issued to him by a regular board of chiropractic examiners in another state when said Board is satisfied that such applicant has educational qualifications equal to those prescribed by said Board for admission to practice chiropractic in this State, and upon proof of good and moral character and that he has practiced chiropractic under such license for at least one year. (1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5; C. S., s. 6715; 1933, c. 442, s. 1; 1937, c. 293, s. 1; 1963, c. 646, s. 2; 1967, c. 263, s. 3; 1977, c. 1109, s. 1.)

Editor's Note. — The 1977 amendment rewrote the first paragraph and in the second paragraph, substituted "said Board" for "said State Board of Chiropractic Examiners" near the beginning and deleted "or the equivalent thereof" following "educational qualifications" near the middle.

Competency to Give Expert Testimony. —

As to competency of doctor of chiropractic to testify as an expert in his field, see now § 90-157.2.

§ 90-149. Application fee. — Each applicant shall pay the secretary of said Board a fee as prescribed and set by the Board which fee shall not be more than one hundred dollars (\$100.00). (1917, c. 73, s. 11; C. S., s. 6721; 1977, c. 922, s. 1.)

Editor's Note. — The 1977 amendment substituted "as prescribed and set by the Board which fee shall not be more than one hundred

dollars (\$100.00)" for "of twenty-five dollars (\$25.00)."

§ 90-153. Licensed chiropractors may practice in public hospitals. — A licensed chiropractor in this State may have access to and practice chiropractic in any hospital or sanitarium in this State that receives aid or support from the public, and shall have access to diagnostic X-ray records and laboratory records relating to the chiropractor's patient. (1919, c. 148, s. 3; C. S., s. 6724; 1977, c. 1109, s. 2.)

Editor's Note. — The 1977 amendment added "and shall have access to diagnostic X-ray

records and laboratory records relating to the chiropractor's patient" to the end of the section.

§ 90-155. Annual fee for renewal of license. — Any person practicing chiropractic in this State, in order to renew his license, shall, on or before the first Tuesday after the First Monday in January in each year after a license is issued to him as herein provided, pay to the secretary of the Board of Chiropractic Examiners a renewal license fee as prescribed and set by the said Board which fee shall not be more than one hundred dollars (\$100.00), and shall furnish the Board evidence that he has attended two days of educational sessions

or programs approved by the Board during the preceding 12 months, provided the Board may waive this educational requirement due to sickness or other hardship of applicant.

Any license or certificate granted by the Board under this Article shall automatically be canceled if the holder thereof fails to secure a renewal within 30 days from the time herein provided; but any license thus canceled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of the renewal fee and an additional twenty-five dollars (\$25.00) reinstatement fee. (1917, c. 73, s. 15; C. S., s. 6726; 1933, c. 442, s. 4; 1937, c. 293, s. 2; 1963, c. 646, s. 4; 1971, c. 715; 1977, c. 922, ss. 2, 3.)

Editor's Note. — The 1977 amendment substituted "as prescribed and set by the said Board which fee shall not be more than one hundred dollars (\$100.00)" for "of twenty-five dollars (\$25.00)" near the middle of the first

paragraph and substituted "payment of the renewal fee and an additional twenty-five dollars (\$25.00) reinstatement fee" for "payment of twenty-five dollars (\$25.00)" at the end of the second paragraph.

§ 90-157.1. Free choice by patient guaranteed. — No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose a duly licensed chiropractor as the provider of care or services which are within the scope of practice of the profession of chiropractic as defined in this Chapter. (1977, c. 1109, s. 3.)

§ 90-157.2. Doctor of Chiropractic as expert. — A Doctor of Chiropractic, for all legal purposes, shall be considered an expert in his field and, when properly qualified, may testify in a court of law as to etiology, diagnosis, prognosis, and disability, including anatomical, neurological, physiological, and pathological considerations within the scope of chiropractic. (1977, c. 1109, s. 3.)

ARTICLE 9.

Nurse Practice Act.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-158. Definitions. — As used in this Article:

- (3) "Nursing" is a unique service provided for persons who are ill, injured, or experiencing alterations in normal health processes; it is the ministering to, the assisting of, and the sustained, vigilant, and continuous care of those acutely or chronically ill; the supervision of patients during convalescence, restoration, and rehabilitation; and the promotion of health maintenance.

- a. **Nursing by Registered Nurse.** — The practice of nursing by registered nurse means the performance for compensation of any act in the observation, care, and counsel of persons who are ill, injured, or experiencing alterations in normal health processes, and/or in the supervision and teaching of others who are or will be involved in nursing care; and/or the administration of medications and treatment as prescribed by a licensed physician or dentist or any registered nurse or assistant to a physician when authorized under the provisions of G.S. 90-18.1. Nursing by registered nurse requires specialized knowledge, judgment, and skill, but does not require nor permit except under supervision of a physician licensed to practice medicine in North Carolina medical diagnosis or medical prescription of therapeutic or corrective measures. The use of skill and judgment is based upon an understanding of principles from the biological, social, and physical sciences. Nursing by registered nurse requires use of skills in modifying methods of nursing care and supervision as the patient's needs change.
- b. **Nursing by Licensed Practical Nurse.** — The practice of practical nursing means the performance for compensation of selected acts in the care of persons who are ill, injured, or experiencing alterations in normal health processes. Such performance requires a knowledge of and skill in simple nursing procedures, gained through prescribed preparation, but does not require the specialized knowledge, judgment, and skill essential for nursing by registered nurse. Practical nursing is performed under orders of a licensed physician or a licensed dentist, or any registered nurse or assistant to a physician when authorized under the provisions of G.S. 90-18.1, and/or under directions issued by a registered nurse.

(1977, c. 904, ss. 2, 3.)

Editor's Note. —

The 1977 amendment, in subdivision (3), added "or any registered nurse or assistant to a physician when authorized under the provisions of G.S. 90-18.1" to the end of the first sentence of paragraph a and inserted that language in the third sentence of paragraph b. Session Laws 1977, c. 904, s. 6, provides: "The provisions of this act shall expire on July 1, 1978."

As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (3) are set out.

The North Carolina statutes proscribe a registered or licensed practical nurse from carrying out orders given by a licensed physician's assistant. — See opinion of Attorney General to Mr. Ed McClearen, Staff to Mental Health Commission, 46 N.C.A.G. 169 (1977), decided prior to the passage of Chapter 904, 1977 Session Laws, which will expire on July 1, 1978, and which amended this section.

§ 90-167. Practice as registered nurse and licensed practical nurse regulated. — In order to safeguard life and health, any person practicing or offering to practice nursing as defined herein shall be required to submit evidence that he or she is qualified so to practice by virtue of a license with current renewal, issued by the North Carolina Board of Nursing. After December 31, 1965, any person not licensed under this Article who

(1) Practices or offers to practice nursing; or

(2) Uses any card, title, or abbreviation to indicate that such person is a registered nurse or licensed practical nurse, shall be guilty of a misdemeanor.

Nothing in this Article shall be construed in any way to prohibit or limit the performance by any person of such duties as specified mechanical acts in the physical care of a patient when such care and activities do not require the knowledge and skill required of a registered nurse or licensed practical nurse,

or when such care and activities are performed under orders or directions of a licensed physician, licensed dentist or registered nurse.

Nothing in this Article shall be construed in any way to prohibit or limit the performance of any registered nurse who is approved to perform medical acts under the provisions of Article 1 of this Chapter. (1953, c. 1199, s. 1; 1965, c. 578, s. 1; 1977, c. 904, s. 4.)

Editor's Note. — The 1977 amendment added the third paragraph.

Session Laws 1977, c. 904, s. 6, provides: "The provisions of this act shall expire on July 1, 1978."

Editor's Note. — The 1977 amendment added the third paragraph.

Session Laws 1977, c. 904, s. 6, provides: "The provisions of this act shall expire on July 1, 1978."

§ 90-171.5. Revocation, suspension, or denial of license.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-171.15. Appeals.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 10.

Midwives.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

ARTICLE 11.

Veterinarians.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other

Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or

continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-182. North Carolina Veterinary Medical Board; appointment, membership, organization.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-185. General powers of the Board.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-187.8. Discipline of licensees.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 12.

Podiatrists.

§§ 90-188 to 90-202.1: Recodified as §§ 90-202.2 to 90-202.14, effective July 1, 1975.

Editor's Note. — This Article was rewritten by Session Laws 1975, c. 672, s. 1, effective July

1, 1975, and has been recodified as Article 12A, § 90-202.2 et seq., of this Chapter.

ARTICLE 12A.

Podiatrists.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-202.2. "Podiatry" defined. — Podiatry as defined by this Article is the surgical or medical or mechanical treatment of all ailments of the human foot, except the amputation of the foot or toes or the administration of an anesthetic other than local and except the correction of clubfoot deformity and triple arthrodesis. (1919, c. 78, s. 2; C. S., s. 6763; 1945, c. 126; 1963, c. 1195, s. 2; 1971, c. 1211; 1975, c. 672, s. 1.)

Editor's Note. — This Article is Article 12 of this Chapter as rewritten by Session Laws 1975, c. 672, s. 1, effective July 1, 1975, and recodified.

Where appropriate, the historical citations to the sections of the former Article have been added to the corresponding sections of the new Article.

§ 90-202.3. Unlawful to practice unless registered. — No person shall practice podiatry unless he shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice podiatry without being duly licensed and registered, as provided in this Article, he shall not be allowed to maintain any action to collect any fee for such services. Any person who engages in the practice of Podiatry unless licensed and registered as hereinabove defined, or who attempts to do so, or who professes to do so, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine or imprisonment or both in the discretion of the court. Each act of such unlawful practice shall constitute a separate offense. (1919, c. 78, s. 1; C. S., s. 6764; 1963, c. 1195, s. 2; 1967, c. 1217, s. 2; 1975, c. 672, s. 1.)

§ 90-202.4. Board of Podiatry Examiners; how elected; terms of office; powers; duties. — There shall be established a Board of Podiatry Examiners for the State of North Carolina. This Board shall consist of three members who shall be elected by a vote of all licensed podiatrists who are practicing in the State of North Carolina and who are members of the North Carolina Podiatry Society. All of such members of the Board shall be licensed podiatrists who have practiced podiatry in North Carolina for a period of not less than five years immediately prior to their election. The members of the Board shall be elected for a term of three years: Provided, however, one of the original Board shall serve a term of one year; one, two years; and one, three years. The members of the former Board shall serve until the new Board is elected. The Board shall have authority to elect its own presiding and other officers, and may also elect a person to fill an unexpired term. The Board, in carrying out its responsibilities, shall have authority to employ personnel, full-time or part-time, as shall be determined to be necessary in the work of the Board. The Board shall have authority to pay compensation to the member of the Board holding the position of secretary-treasurer on a basis to be determined by the Board. The Board is required to keep proper and complete records with respect to all of its activities, financial and otherwise, and shall on or before January 30 of each year submit a written report to the Governor and to such other officials and/or agencies as other sections of the General Statutes may require, said report covering the activities of the Board during the previous calendar year, which report shall include a verified financial statement. The Board is authorized to adopt rules and regulations governing its proceedings and the practice of podiatry in this State, not inconsistent with the provisions of this Article. The Board shall maintain at all times an up-to-date list of the names and addresses of each licensed podiatrist in North Carolina, which list shall be available for inspection and which shall be included in the annual report referred to above. (1919, c. 78, s. 3; C. S., s. 6765; 1963, c. 1195, s. 2; 1967, c. 1217, s. 3; 1975, c. 672, s. 1.)

§ 90-202.5. Applicants to be examined; examination-fee; requirements. —

Any person not heretofore authorized to practice podiatry in this State shall file with the Board of Podiatry Examiners an application for examination accompanied by a fee not to exceed one hundred dollars (\$100.00), together with proof that the applicant is more than 18 years of age, is of good moral character, and has obtained a preliminary education equivalent to four years of instruction in a high school and two years of instruction in a college or university approved by the American Association of Colleges and Universities. Such applicant before presenting himself for examination must be a graduate of a college of podiatric medicine accredited by the National Council of Education of American Podiatry Association. (1919, c. 78, s. 9; C. S., s. 6766; 1963, c. 1195, ss. 1, 2; 1967, c. 1217, s. 4; 1975, c. 672, s. 1.)

§ 90-202.6. Examinations; subjects; certificates. —

The Board of Podiatry Examiners shall hold at least one examination annually for the purpose of examining applicants under this Article. The examination shall be at such time and place as the Board may see fit. The Board may make such rules and regulations as it may deem necessary to conduct its examinations and meetings. It shall provide, preserve and keep a complete record of all its transactions. Examinations for registration under this Article shall be in the English language and shall be written, oral, or clinical, or a combination of written, oral or clinical, as the Board may determine, and may include the following subjects: anatomy, physiology, bacteriology, chemistry, dermatology, podiatry, surgery, materia medica, pharmacology and pathology. No applicant shall be granted a license certificate by the Board unless he obtains a general average of 75 or over, and not less than fifty percent (50%) in any one subject. After such examination the Board shall without unnecessary delay, act on same and issue license certificates to the successful candidates signed by each member of the Board; and the Board of Podiatry Examiners shall report annually to each licensed podiatrist in the State of North Carolina. (1919, c. 78, s. 4; C. S., s. 6767; 1963, c. 1195, s. 2; 1967, c. 1217, s. 5; 1975, c. 672, s. 1.)

§ 90-202.7. Reexamination of unsuccessful applicants. —

An applicant failing to pass his examination shall within one year be entitled to reexamination upon the payment of an amount not to exceed one hundred dollars (\$100.00), but not more than two reexaminations shall be allowed any one applicant. Should he fail to pass his third examination he shall file a new application before he can again be examined. (1919, c. 78, s. 6; C. S., s. 6768; 1967, c. 1217, s. 6; 1975, c. 672, s. 1.)

§ 90-202.8. Revocation of certificate; grounds for; suspension of certificate. — (a) The North Carolina State Board of Podiatry Examiners, in accordance with Chapter 150A (Administrative Procedure Act) of the General Assembly, shall have the power and authority to:

- (1) Refuse to issue a license to practice podiatry;
- (2) Refuse to issue a certificate of renewal of a license to practice podiatry;
- (3) Revoke or suspend a license to practice podiatry; and
- (4) Invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper;

in any instance or instances in which the Board is satisfied that such applicant or licensee:

- (1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;
- (2) Is a chronic or persistent user of alcohol intoxicants or habit-forming drugs or narcotics to the extent that the same impairs his ability to practice podiatry;

- (3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;
- (4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;
- (5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any state or federal narcotic or barbiturate law;
- (6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;
- (7) Is mentally, emotionally, or physically unfit to practice podiatry or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of his patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice podiatry unless or until such person shall have been subsequently lawfully declared to be mentally competent;
- (8) Has employed or procured any person to obtain or solicit professional patronage or has personally solicited professional patronage;
- (9) Has permitted the use of his name, diploma or license by another person either in the illegal practice of podiatry or in attempting to fraudulently obtain a license to practice podiatry;
- (10) Has engaged in such immoral conduct as to discredit the podiatry profession;
- (11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;
- (12) Has been negligent in the practice of podiatry;
- (13) Is not professionally competent in the practice of podiatry;
- (14) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients;
- (15) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;
- (16) Has committed any fraudulent or misleading acts in the practice of podiatry;
- (17) Has, directly or indirectly, advertised in any manner for professional patronage or business; provided, however, that it shall not be considered advertising for a podiatrist, duly licensed to practice in this State, to place his name, office address, telephone number, and office hours in an approved register or other publication, or to place his name, followed by the word, "podiatrist," on the door or window of his office, or to place his name before the public in any manner expressly approved by the Board;
- (18) Has used or permitted another to use his name, as a podiatrist, in promoting the sale or advertisement of any product or service;
- (19) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of podiatry;
- (20) Has persistently maintained, in the practice of podiatry, unsanitary offices, practices, or techniques;
- (21) Is a menace to the public health by reason of having a serious communicable disease;
- (22) Has distributed or caused to be distributed any intoxicant, drug, or narcotic for any other than a lawful purpose; or

(23) Has engaged in any unprofessional conduct as the same may be, from time to time, defined by the rules and regulations of the Board.

(b) If any person engages in or attempts to engage in the practice of podiatry while his license is suspended, his license to practice podiatry in the State of North Carolina may be permanently revoked.

(c) Action of the Board shall be subject to judicial review as provided by Chapter 150A (Administrative Procedure Act). (1919, c. 78, ss. 12, 13; C. S., s. 6772; 1953, c. 1041, ss. 17, 18; 1963, c. 1195, s. 2; 1967, c. 691, s. 45; 1973, c. 1331, s. 3; 1975, c. 672, ss. 1, 2.)

Editor's Note. — Session Laws 1975, c. 672, s. 2, provides: "Upon the effective date of Chapter 150A of the General Statutes [Feb. 1, 1976], the reference to Chapter 150 in G.S. 90-194 [90-202.8] shall be amended to refer to Chapter 150A."

§ 90-202.9. Fees for certificates and examinations; compensation of Board.

— To provide a fund in order to carry out the provisions of this Article the Board shall charge not more than one hundred dollars (\$100.00) for each license issued and one hundred dollars (\$100.00) for each examination. From such funds the Board shall pay its members at the rate set out in G.S. 93B-5: Provided, that at no time shall the expenses exceed the cash balance on hand. (1919, c. 78, s. 14; C. S., s. 6773; 1967, c. 1217, s. 9; 1975, c. 672, s. 1.)

§ 90-202.10. Annual fee; cancellation or renewal of license.

— On or before the first day of July of each year every podiatrist engaged in the practice of podiatry in this State shall transmit to the secretary-treasurer of the said North Carolina State Board of Podiatry Examiners his signature and post-office address, the date and year of his or her certificate, together with a fee to be set by the Board of Podiatry Examiners not to exceed one hundred fifty dollars (\$150.00) and receive therefor a renewal certificate. Any license or certificate granted by said Board under or by virtue of this section shall automatically be cancelled and annulled if the holder thereof fails to secure the renewal herein provided for within a period of 30 days after the first day of July of each year, and such delinquent podiatrist shall pay a penalty for reinstatement of twenty-five dollars (\$25.00) for each succeeding month of delinquency until a six-month period of delinquency exists. After a six-month period of delinquency exists or after January 1 following the July 1 deadline, the said podiatrist must appear before the North Carolina Board of Podiatry Examiners and take a new examination before being allowed to practice podiatry in the State of North Carolina. (1931, c. 191; 1963, c. 1195, s. 2; 1967, c. 1217, s. 10; 1975, c. 672, s. 1; 1977, c. 621.)

Editor's Note. — The 1977 amendment substituted "one hundred fifty dollars (\$150.00)" for "fifty dollars (\$50.00)" in the first sentence.

§ 90-202.11. Continuing education courses required.

— Beginning May 1, 1976, all registered podiatrists then or thereafter licensed in the State of North Carolina shall be required to take annual courses of study in subjects relating to the practice of the profession of podiatry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive care to the public. The length of study shall be prescribed by the Board but shall not exceed 25 hours in any calendar year. Attendance must be at a course or courses approved by the Board. Attendance at any course or courses of study are to be certified to the Board upon a form provided by the Board and shall be submitted by each registered podiatrist at the time he makes application to the Board for

the renewal of his license and payment of his renewal fee. The Board is authorized to treat funds set aside for the purpose of continuing education as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education. This requirement may be waived by the Board in cases of certified illness or undue hardship as provided in the rules and regulations of the Board. (1975, c. 672, s. 1.)

§ 90-202.12. Free choice by patient guaranteed. — No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose the provider of care or service which are within the scope of practice of a duly licensed podiatrist or duly licensed physician as defined in this Chapter. (1967, c. 690, s. 3; 1975, c. 672, s. 1.)

§ 90-202.13. Injunctions. — The Board may appear in its own name in the superior courts in an action for injunctive relief to prevent violation of this Article and the superior courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations. (1975, c. 672, s. 1.)

§ 90-202.14. Not applicable to physicians. — Nothing in this Article shall apply to a physician licensed to practice medicine or to a person acting under the supervision or at his direction in the course of such practice. (1975, c. 672, s. 1.)

ARTICLE 13.

Embalmers and Funeral Directors.

§§ 90-203 to 90-210.17: Recodified as §§ 90-210.18 to 90-210.25, effective October 1, 1975.

Editor's Note. — This Article was rewritten 1975, and has been recodified as Article 13A, § by Session Laws 1975, c. 571, effective Oct. 1, 90-210.18 et seq., of this Chapter.

ARTICLE 13A.

Practice of Funeral Service.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-210.18. State Board; members; election; qualifications; term; vacancies. — (a) The practice of funeral service in the State of North Carolina is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the funeral service profession merits and receives the confidence of the public and that only qualified persons be permitted to practice funeral service in the State of North Carolina. This Article shall be liberally construed to carry out these objects and purposes.

(b) The North Carolina Board of Mortuary Science is hereby created as a continuation of the North Carolina Board of Embalmers and Funeral Directors, which was heretofore created by Chapter 338, Public Laws 1901; by Chapter 174, Public Laws 1931; by Chapter 951, Public Laws 1949; by Chapter 1240, Public Laws 1957; and continued by Chapter 630, Public Laws 1965, and the Board of Mortuary Science is hereby created as the agency of the State for regulation of the practice of funeral service in this State. Said Board of Mortuary Science shall consist of five funeral service licensees licensed to practice in North Carolina and two funeral directors who are licensed to practice funeral directing in North Carolina, or two funeral service licensees licensed to practice in North Carolina, and who possess other qualifications hereinafter specified and who shall have been elected in an election held as hereinafter provided in which every person licensed to practice embalming, funeral directing or funeral service in North Carolina shall be entitled to vote. Each of said five funeral service licensees shall be elected for a term of five years and until his successor shall be elected and shall qualify and each of said two funeral directors or two funeral service licensees shall be elected for a term of two years and until his successor shall be elected and shall qualify. Each year there shall be elected one funeral service licensee for a term of five years and one funeral director or funeral service licensee for a term of two years. Any vacancy occurring on said Board shall be filled for the period of the unexpired term by a majority vote of the remaining members of the Board. No funeral service licensee shall be nominated for membership on said Board, or shall be elected to membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice funeral service in North Carolina and actually engaged in the practice of funeral service in North Carolina and unless he has had a license to practice funeral service or embalming in North Carolina for not less than five consecutive years prior thereto. No funeral director shall be nominated for membership on said Board or shall be elected to membership on said board unless, at the time of such nomination and at the time of such election, he is licensed to practice funeral directing in North Carolina and actually engaged in the practice of funeral directing in North Carolina and unless he has had such license to practice funeral directing in North Carolina for not less than five consecutive years prior thereto. In addition to the seven members above provided for, the chairman of the Commission for Health Services shall serve ex officio as a member of said Board and one public member of the Board appointed by the Governor who shall be a voting member of the Board.

The first member appointed by the Governor shall serve until June 30, 1977, or until his successor is appointed. Thereafter, the Governor shall appoint such member of the Board to serve for a four-year term, beginning on July 1, 1977. The member of the Board appointed by the Governor shall not be a person licensed under this Article and such person shall not be employed by a person licensed under this Article.

(c) Nominations and elections of members of the North Carolina State Board of Mortuary Science shall be as follows:

- (1) An election shall be held each year to elect two persons for membership on the Board of Mortuary Science, each to take office on the first day of January following the election, one funeral service licensee to hold office for a term of five years and until his successor has been elected and shall qualify, and one funeral director or funeral service licensee to hold office for a term of two years and until his successor has been elected and shall qualify; provided that if in any year the election of the members of such Board for that year shall not have been completed by January 1 of that year, then the said members elected that year shall take office immediately after the completion of the election and the five-year member shall hold office until the first of January of the fifth year thereafter and until his successor is elected and qualified and the two-year member shall hold office until the first of January of the second year thereafter and until his successor is elected and qualified.
- (2) Every embalmer, funeral director and funeral service licensee with a current North Carolina license shall be eligible to vote in all elections. The holding of such a license to practice in North Carolina shall constitute registration to vote in such elections. The list of licensed embalmers, funeral directors and funeral service licensees shall constitute the registration list for elections.
- (3) All elections shall be conducted by the State Board of Mortuary Science which is hereby constituted a Board of Mortuary Science Elections. If a member of the State Board of Mortuary Science whose position is to be filled at any election is nominated to succeed himself and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Mortuary Science Elections for that election and the remaining members of the Board of Mortuary Science Elections shall proceed and function without his participation.
- (4) Nomination of candidates for election shall be made to the Board of Mortuary Science Elections by a written petition signed by not less than 20 embalmers, funeral directors or funeral service licensees licensed to practice in North Carolina, and filed with said Board of Mortuary Science Elections subsequent to the fifteenth day of May of the year in which the election is to be held and not later than midnight of the fifteenth day of August of such year, or not later than such earlier date (not before July 1) as may be set by the Board of Mortuary Science Elections: Provided, that not less than 10 days' notice of such earlier date shall be given to all embalmers, funeral directors and funeral service licensees qualified to sign a petition of nomination.
- (5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Mortuary Science Elections or its designated secretary at any time prior to the closing of the polls in any election.
- (5a) No person shall be eligible for nomination or election to the Board of Mortuary Science who at the time of nomination or election is serving as an elected member of the Board pursuant to the provisions of G.S. 90-210.18(c).
- (6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Mortuary Science Elections shall prescribe, ballots containing, in alphabetical order, the names of all nominees; and each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Mortuary Science Elections at such time as may be fixed by the Board of Mortuary Science Elections a ballot and a return official envelope addressed to said Board shall be mailed to each embalmer, funeral director and funeral service licensee licensed to practice in North Carolina, together

with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

“Serial No. of Envelope
Signature of Voter
Address of Voter
.

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope).” The Board of Mortuary Science Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless within the time hereinafter provided it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

- (7) The date and hour fixed by the Board of Mortuary Science Elections as the latest time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.
- (8) The said ballots shall be canvassed by the Board of Mortuary Science Elections beginning at noon on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed embalmer, funeral director or funeral service licensee may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.
- (9) If one of the nominees shall receive a majority of the votes cast, he shall be declared elected. If no candidate shall receive a majority of the votes cast, the said Board shall order a second election to determine a contest between the two candidates receiving the highest number of votes. In any election if there is a tie between candidates, the tie shall be resolved by the vote of the State Board of Mortuary Science, provided that if a member of that Board is one of the candidates in the tie, he may not participate in such vote.

- (10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements.
 - (11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations, because of lack of plural or proper nominations, or death, or withdrawal, or disqualification or any other reason, there shall be (i) only one candidate for a position, he shall be declared elected by the Board of Mortuary Science Elections, or (ii) no candidate for a position, the position shall be filled by the State Board of Mortuary Science. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the State Board of Mortuary Science. In the event of the death or resignation of a member of the State Board of Mortuary Science, after taking office, his position shall be filled for the unexpired term by the State Board of Mortuary Science.
 - (12) An official list of all licensed embalmers, funeral directors and funeral service licensees shall be kept at an office of the Board of Mortuary Science Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed embalmer, funeral director or funeral service licensee. As soon as the voting in any election begins, a list of the licensed embalmers, funeral directors, and funeral service licensees shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.
 - (13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the Board of Mortuary Science Elections for a period of six months following the close of an election.
 - (14) From any decision of the Board of Mortuary Science Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Article 33 of Chapter 143 of the General Statutes of North Carolina.
 - (15) The Board of Mortuary Science Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed embalmers, funeral directors, and funeral service licensees.
- (d) The Board of Mortuary Science Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said Board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered embalmers, funeral directors and funeral service licensees, for the issuance and receipt of envelopes and ballots. (1901, c. 338, ss. 1-3; Rev., s. 4384; C. S., s. 6777; 1931, c. 174; 1945, c. 98, s. 1; 1949, c. 951, s. 1; 1957, c. 1240, s. 1; 1965, c. 630, s. 1; 1973, c. 476, s. 128; 1975, c. 571.)

Editor's Note. — This Article is Article 13 of this Chapter as rewritten by Session Laws 1975, c. 571, effective Oct. 1, 1975, and recodified.

Where appropriate, the historical citations to the sections of the former Article have been added to the corresponding sections of the new Article.

§ 90-210.19. Oath of office. — The members of said Board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other State officers, which said oath shall be administered by a person qualified to administer such oath and shall be filed in the office of the Secretary of State. (1901, c. 338, ss. 3, 4; Rev., s. 4385; C. S., s. 6778; 1945, c. 98, s. 2; 1949, c. 951, s. 2; 1957, c. 1240, s. 2; 1969, c. 584, s. 1; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.20. Definitions. — (a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio or television station.

(b) "Board" means the North Carolina State Board of Mortuary Science.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(d) "Embalmer" means any person engaged in the practice of "embalming" as defined below.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of the dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of the dead human body.

(f) "Funeral directing" means engaging in the practice of funeral service except embalming as hereinbefore defined.

(g) "Funeral director" means any person engaged in the practice of "funeral directing" as defined above.

(h) "Funeral establishment" means every place or premises devoted to or used in the care and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the profession of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the "practice of funeral service" as below defined.

(j) "Funeral service profession" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. It also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as such with the Board. (1957, c. 1240, s. 2; 1975, c. 571.)

§ 90-210.21. State institutions. — Nothing in this Article shall apply to or in any manner interfere with the duties of any officer of local or State institutions,

nor shall be construed to apply to the burial of dead bodies of paupers or of inmates of State institutions when buried at the sole expense of the State. (1957, c. 1240, s. 2; 1975, c. 571.)

§ 90-210.22. Required meetings. — The Board shall hold at least two meetings in each year at which examinations shall be given to qualified applicants for licenses. In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Four members shall constitute a quorum. (1901, c. 338, ss. 5, 6, 7, 8; Rev., s. 4387; C. S., s. 6780; 1949, c. 951, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.23. Powers and duties of the Board. — (a) The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States.

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be elected and qualify. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties.

(c) The members of the Board shall serve without compensation provided that such members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the Board, and in addition thereto they shall receive per diem and expense reimbursement as provided in G.S. 93B-5 for every day actually spent by such member upon the business of the Board. All expenses, salaries and per diem provided for in this Article shall be paid from fees received under the provisions of this Article and shall in no manner be an expense to the State.

(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which he is a licensee or resident trainee, and every funeral service establishment shall be subject to inspection by the Board at all reasonable times and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident trainee and funeral service establishment shall provide the Board with his or its current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident trainee or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150, to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board.

(e) The Board is empowered to regulate and inspect, according to law, funeral service establishments, their operation and the licenses under which they are operated, and to enforce as provided by law the rules, regulations and requirements of the Division of Health Services and of the city, town or county wherein any such funeral service establishment is maintained and operated.

(f) The Board may establish, supervise, regulate and control programs for the resident trainee. It may approve schools of mortuary science or funeral service, graduation from which is required by this Article as a qualification for the granting of any license, and may establish essential requirements and standards for such approval of mortuary science or funeral service schools.

(g) Schools for teaching mortuary science which are approved by the Board shall have extended to them the same privileges as to the use of bodies for dissecting while teaching as those granted in this State to medical colleges, but

such bodies shall be obtained through the same agencies which provide bodies for medical colleges.

(h) The Board shall adopt a common seal.

(i) The Board may perform such other acts and exercise such other powers and duties as may be provided elsewhere in this Article or otherwise by law and as may be necessary to carry out the powers herein conferred. (1901, c. 338, ss. 5, 6, 7, 8, 11; Rev., ss. 4386, 4387, 4389; C. S., ss. 6779, 6780, 6783; 1949, c. 951, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.24. Inspector. — There may be appointed by the Board one or more agents whose title shall be "inspector of the Board of Mortuary Science of the State of North Carolina," and no person shall be eligible for appointment to such office unless he shall, at said time, be licensed under this Article as a funeral service licensee in the State of North Carolina and unless prior to the time of such appointment he has had not less than five consecutive years' experience as such a licensee or as a licensed embalmer and funeral director. All inspectors shall hold office during the pleasure of the Board, which shall determine what their duties shall be, and such inspectors are authorized to enter the office, premises, establishment or place of business of any funeral service licensee, funeral director or embalmer in the State of North Carolina or any office, premises, establishment or place where the practice of funeral service is carried on, or where such practice is advertised as being carried on, or where a funeral is being conducted, for the purpose of inspecting said office, premises, or establishment or for the purpose of inspecting the license or registration of any said licensee and resident trainee operating therein.

Inspectors are further authorized to serve any papers or subpoenas issued by the Board or any officer or member thereof under authority of this Article, and also to perform any other duty or duties prescribed or ordered by the Board. (1975, c. 571.)

§ 90-210.25. Licensing. — (a) Qualifications, Examinations, Resident Traineeship and Licensure. —

- (1) To be licensed for the practice of funeral directing under this Article a person must be at least 18 years of age, a resident of this State and a citizen of the United States, of good moral character, and must have completed a minimum of 32 semester hours (or its equivalent) of academic instruction in a college or university accredited by the State of North Carolina or be a graduate of a mortuary science college approved by the State Board of Mortuary Science. An applicant must complete 12 months of resident traineeship as a funeral director before or after the college requirement as stated and pass the required examination provided for in this Article.

Each such applicant for the license shall be examined orally or in writing on the following subjects:

- a. Basic health sciences including bacteriology, hygiene, and public health.
 - b. Funeral service administration including accounting, funeral law, psychology, funeral principles, directing and management.
 - c. Laws of North Carolina and rules and regulations of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (2) To be licensed for the practice of embalming under this Article a person must be at least 18 years of age, a resident of this State and a citizen of the United States, of good moral character and be a graduate of a mortuary science college approved by the State Board of Mortuary Science. An applicant must complete 12 months of resident traineeship

as an embalmer before or after the college requirement as stated and pass the required examination provided for in this Article.

Each such applicant for the license shall be examined orally or in writing on the following subjects:

- a. Basic health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health.
- b. Funeral service arts and sciences including embalming and restorative art.
- c. Laws of North Carolina and rules and regulations of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

- (3) To be licensed for the practice of funeral service under this Article a person must be at least 18 years of age, a resident of this State and a citizen of the United States, of good moral character and be a graduate of a mortuary science college approved by the State Board of Mortuary Science. An applicant must complete 12 months of resident traineeship as a funeral service licensee before or after the college requirement as stated and pass the required examination provided for in this Article.

Each such applicant for the license shall be examined orally or in writing on the following subjects:

- a. Basic health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health.
- b. Funeral service arts and sciences including embalming and restorative art.
- c. Funeral service administration including accounting, funeral law, psychology, funeral principles, directing and management.
- d. Laws of North Carolina and rules and regulations of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

- (4) A person desiring to become a resident trainee shall make application on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof. The application must be sustained by oath of the applicant and be accompanied by a fee not to exceed thirty-five dollars (\$35.00). When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship. When a resident trainee desires to get in-service training to become a funeral director with a person licensed for the practice of funeral directing or when a resident trainee desires to become an embalmer and desires in-service training with a person licensed for the practice of embalming or when a resident trainee desires to become a funeral service licensee and desires in-service training with a funeral service licensee, a request shall be submitted to the Board. If such permission is granted and at any time thereafter such resident trainee leaves the proctorship of the licensee whose service has been entered, it shall be the duty of such licensee to give such resident trainee an affidavit showing the length of time served with him, which affidavit shall be filed with the Board and made a matter of record in that office, and if such resident trainee engages in practice in this State, a request for permission to do so shall be submitted to the Board.

A certificate of resident traineeship issued as herein provided shall be signed by the resident trainee and shall be renewable one year after the date of original registration, provided, however, that such certificate may not be renewed more than two times unless the resident trainee is still eligible for the license examination. The Board shall mail to each registered trainee at his last known address a notice that the

renewal fee is due and that, if not paid within 30 days of the notice, the certificate shall be canceled; provided further, that there shall be a penalty for the lapse in renewal of five dollars (\$5.00), in addition to the renewal itself; provided, that the registration of any resident trainee who is actually engaged in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of such service without penalties.

All resident trainees registered as provided herein shall be required to report to the Board at least every three months upon forms provided by the Board showing the work which has been completed during the preceding three months of resident traineeship. The data contained in said report shall be certified as correct by the licensee under whom he has served during such period and by the person licensed who is managing the funeral service establishment. The term of traineeship shall be considered as a primary vocation and may not be served during the time the resident trainee is enrolled at a college for the purpose of qualifying for a license under the provisions of this Article.

Before such resident trainee shall be eligible to receive a license for practice, evidence required by this Article shall be presented along with an affidavit from the licensee or affidavits from the licensees under whom the trainee worked showing that the trainee has assisted in the conducting of at least 25 funerals during resident traineeship, if the application is for a funeral director's license, or that the trainee has assisted in the embalming of at least 25 bodies during resident traineeship, if the application is for an embalmer's license, or both such requirements if the application is for a license as a funeral service licensee. In all applications of resident trainees for licenses for practice under this Article, the eligibility of the applicant shall be determined by the records filed with the Board. No credit shall be allowed for such one-year period of resident traineeship that shall have been completed more than three years preceding any examination for such license; provided, however, that the Board may waive the limitations of time prescribed in this section for any person during the period of his service in the armed service of the United States where application for such waiver is made in writing within six months of severance therefrom, and in any case in which the Board by majority vote of its members present shall determine in its discretion that the enforcement thereof will create an unreasonable hardship.

The Board shall have power to suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

At the same time not more than one resident trainee shall be permitted to register under any one person licensed under this Article. Each sponsor for a registered resident trainee must be actively employed with a funeral establishment as defined in this Article.

- (5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year at fees to be determined by the Board not to exceed thirty-five dollars (\$35.00), and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew same on or before January 31 of the calendar year for which such license is to be renewed shall be deemed to have forfeited and surrendered such license as of such date. No license so forfeited and surrendered shall be reinstated by the Board except upon application in writing within five years following such forfeiture and upon payment of all delinquent annual renewal fees plus a reinstatement fee of ten dollars (\$10.00); provided, however, that the Board may waive the provisions of this section for the holder of any license during the period of service in the armed services of the United States upon application within six months of severance therefrom, and provided further, that the Board may in its discretion upon application of the holder of any license grant the temporary suspension of such license for any period not exceeding five years during which the holder does not engage in the practice of funeral service and reinstate the same without the delinquent annual fees and penalties herein provided whenever such practice is resumed within such period of five years. All licensees now or hereafter licensed in the State of North Carolina are and shall be required to take courses of study in subjects relating to the practice of the profession of embalming and funeral directing to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive care to the public. The length of study shall be 15 hours in a continuing period of three years. Attendance for certification must be at a course or courses approved by the Board prior to enrollment. Attendance at any course or courses of study is to be certified to the Board upon a form provided by the Board. The Board shall be allowed to waive this requirement for renewal in cases of certified illness or undue hardship and this requirement shall be waived for all licensed persons who have been licensed for a continuous period of 25 years.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application thereof receive a license as a funeral service licensee.

(b) Reciprocity. — The Board under such rules and regulations as it may prescribe, may grant (i) reciprocal licenses to funeral directors and embalmers licensed in other states, territories, the District of Columbia, and foreign countries; and (ii) special permits, permitting nonresident funeral directors and embalmers to remove a body from and to arrange a funeral or embalm a body in this State, but such privileges shall not include the right to establish a place of business in, nor engage generally in the business of funeral directing and embalming in, this State. The Board shall fix fees to be paid for such reciprocal licenses and courtesy-card privileges.

(c) Registration, Filing and Transportation. — The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the

funeral establishment where the holder renders service. It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless said body be accompanied by a removal or shipping permit.

(d) Establishment Permit. — No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for each such establishment has been issued by the Board and is conspicuously displayed in such funeral establishment.

No permit to operate a funeral establishment shall be issued by the Board unless each such funeral establishment has in charge a person licensed for the practice of funeral directing or funeral service.

Applications for such funeral establishment permits shall be made on blanks furnished by the Board and filed by the owner, a partner or by the registered agent of the corporation with the Board on or before January 1 of each year and shall be accompanied by a fee of thirty-five dollars (\$35.00). All such permits shall expire on December 31 of each year.

Violation of any provision of this Article or any rules or regulations of the Board committed by any owner, partner, officer, agent or employee of a funeral establishment with the consent of any person, firm or corporation operating such funeral establishment shall be considered sufficient cause for suspension or revocation of such funeral establishment permit.

When more than one person proposes to engage in the operation of a funeral establishment as a partnership or as a corporation, it shall be necessary for one such partner or corporate officer to secure a license for the practice of funeral directing or funeral service and be registered by the Board as the manager of such funeral establishment. No partner or corporate officer shall hold himself out through advertising or otherwise as being a licensee, unless so licensed.

(e) Violations. — Whenever the Board shall have reason to believe that any person to whom a license has been issued by the Board has become unfit to practice within the funeral service profession, or has violated any of the provisions of this Article, or any rule or regulation of the Board, or whenever written complaint charging the holder of such a license with such violation is filed with the Board, any actions taken shall be governed by the provisions of Chapter 150.

The Board may refuse to issue or may refuse to renew or may suspend or may revoke any license, or may place the holder thereof on a term of probation after proper hearing upon finding the holder of such license to be guilty of any of the following acts or omissions:

(1) Conviction of a felony or a crime involving moral turpitude.

(2) Unprofessional conduct which is hereby defined to include:

- a. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;
- b. False or misleading advertising as the holder of a license for practice of funeral service;
- c. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees, provided that this paragraph shall not be deemed to prohibit general advertising by the licensee;
- d. Employment by the licensee of persons known as "cappers," or "steerers" or "solicitors," or other such persons for the purpose of obtaining the services of the licensee;
- e. Employment directly or indirectly of any apprentice, agent, assistant or other persons, on a part- or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee;

- f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business;
- g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral services;
- h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of the picture or name in connection with advertisements or other written material published or caused to be published by the licensee;
- i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;
- j. Violating or cooperating with others to violate any of the provisions of this Article or of the rules and regulations of the Board;
- k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
- l. Refusing to promptly surrender the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof;
- m. Knowingly making any false statement on a certificate of death.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the next-of-kin and of the persons who may be chargeable with the funeral expenses of such decedent. If any such kin be found, his or her authority and directions shall govern the disposal of the remains of such decedent. Any funeral service establishment receiving such remains in violation hereof shall make no charge for any service in connection with such remains prior to delivery of same as stipulated by such kin; provided, however, this section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the next-of-kin or the persons chargeable with the expenses have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are

included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time.

(f) **Unlawful Practices.** — If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than six months, or both, in the discretion of the court. (1901, c. 338, ss. 9, 10, 14; Rev., ss. 3644, 4388; 1917, c. 36; 1919, c. 88; C. S., ss. 6781, 6782; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, ss. 2, 2½; 1965, cc. 719, 720; 1967, c. 691, s. 48; c. 1154, s. 2; 1969, c. 584, ss. 3, 3a, 4; 1975, c. 571.)

ARTICLE 14.

Cadavers for Medical Schools.

§§ 90-212 to 90-216: Repealed by Session Laws 1975, c. 694, s. 1.

ARTICLE 14B.

Disposition of Unclaimed Bodies.

§ 90-216.6. Unclaimed bodies; disposition. — (a) All officers, employees, and agents of the State of North Carolina or of any unit of local government in the State, all undertakers doing business within the State, or any person, institution or agency otherwise having charge or control of an unclaimed body shall immediately notify and, upon the request of the Commission of Anatomy, deliver the dead body to the Commission. The Commission may take and remove the dead body itself in its discretion. No reward or fee shall be paid for such notification of the Commission. The person, institution, or agency having charge or control of an unclaimed body shall make reasonable efforts to notify any interested person of the deceased's death. The recipient to which the Commission of Anatomy distributes the body shall pay all expenses for the embalming, delivery and distribution of the body, and for the reasonable efforts made to notify such persons.

(b) As used herein, an unclaimed body shall mean a dead body which is not claimed for burial upon death and which, as appears to the person, institution or agency having charge or control of the dead body, will not be claimed for burial within 10 days of the deceased's death. The unclaimed body shall remain in the charge or control of the person, institution or agency for a period of 10 days unless the period is extended by the medical examiner or coroner having jurisdiction, or unless the period is shortened by the county director of social services upon his determination that the dead body will not be claimed for burial within 10 days of the deceased's death. Upon the expiration of such period, the person, institution or agency having charge or control of the unclaimed body will deliver it to the Commission at such time and place specified by the Commission or permit the Commission to take and remove the body itself.

(c) All dead bodies not claimed for burial within 10 days of the deceased's death may be received and distributed by the Commission of Anatomy pursuant to the authority contained in G.S. 143B-204 and this Article and in accordance with its rules and regulations. All interests in and rights to dead bodies

unclaimed for burial within 10 days of the deceased's death and received by the Commission of Anatomy shall vest in the Commission.

(d) No autopsy shall be performed on an unclaimed body without the written consent of the Commission of Anatomy except that such written consent is not required for an autopsy performed pursuant to Article 15 of Chapter 90 or Article 21 of Chapter 130 of the General Statutes.

(e) Due caution shall be taken to shield the unclaimed body from public view.

(f) Notwithstanding anything contained in this section, an unclaimed body shall not mean a dead body for which the deceased has made a gift thereof pursuant to Article 15A of Chapter 90 of the General Statutes known as the Uniform Anatomical Gift Act.

(g) Any person failing or refusing to perform any duty imposed by this section or violating any of its provisions shall be guilty of a misdemeanor, punishable by a fine and/or imprisonment in the discretion of the court.

(h) Nothing in this Article shall require the officers, employees or agents of a county to notify the Commission regarding the bodies of minors who were in the custody of the county at the time of death and for whose burial the county will arrange. In the absence of notification, the expenses of the burial shall be a charge upon the county having custody. (1975, c. 694, s. 3; 1977, c. 458.)

Editor's Note. — The 1977 amendment added subsection (h).

§§ 90-216.7 to 90-216.11: Reserved for future codification purposes.

ARTICLE 14C.

Final Disposition or Transportation of Deceased Migrant Farm Workers and Their Dependents.

§ 90-216.12. Final disposition or transportation of deceased migrant farm workers and their dependents. — (a) Notwithstanding any other provisions of the law, any person having knowledge of the death of a migrant agricultural worker or a worker's dependent shall without delay report the fact of such death to the department of social services in the county in which the body is located together with any information he may possess respecting the deceased including his identity, place of employment, permanent residence, and the name, address and telephone number of any relative and interested person. The county department of social services shall within a reasonable time of receiving such report transmit to the Department of Human Resources notice of the death and any information pertaining thereto. The Department of Human Resources shall, upon notification, make every reasonable effort to inform the nearest relative and any interested person of said death.

(b) In the event that the identity of the person cannot be determined within a reasonable period of time, or in the event that the body is unclaimed 10 days after death, the body shall be offered to the Commission of Anatomy and, upon its request, shall be delivered to the commission as per the provisions of G.S. 90-216.6(a). In the event that the Commission of Anatomy does not request an unclaimed body offered it or the estate, and in the event that the relatives or other interested persons claiming the body are unable to provide for the final disposition of said migrant agricultural worker or his dependent, the Department of Human Resources is authorized, empowered, and directed to arrange for the final disposition of the deceased.

(c) In the event that the estate, relatives or interested persons are able to provide for final disposition but are unable to effect the transportation of the

body of the deceased to his legal residence or the legal residence of the relatives or interested persons, the Department of Human Resources is authorized, empowered, and directed to allocate a sum of not more than two hundred dollars (\$200.00) to defray said transportation expenses.

Payments made from the funds appropriated under this subsection shall be made in accordance with rules and regulations promulgated by the Department of Human Resources.

For purposes of this Article, a migrant agricultural worker is any worker who moves in response to the demand for seasonal agricultural labor.

For purposes of this Article, dependent means child, grandchild, spouse or parent of a migrant agricultural worker who moves with said migrant agricultural worker in response to the demand for seasonal agricultural labor. (1975, c. 891; 1977, c. 648.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section.

ARTICLE 15A.

Uniform Anatomical Gift Act.

§ 90-220.1. **Definitions.** — As used in this Article:

(9) Repealed by Session Laws 1975, c. 32, s. 1.

(10) "Qualified individual" means:

- a. An embalmer holding a valid license to practice in this State,
- b. A physician's assistant approved by and registered with the Board of Medical Examiners pursuant to G.S. 90-18(13).
- c. A registered or a licensed practical nurse certified by the Board of Nursing pursuant to Article 9 of Chapter 90 of the General Statutes, or
- d. A student who is enrolled in an accredited school of medicine operating within this State and who has completed two or more years of a course of study leading to the awarding of a degree of doctor of medicine from such school, and who has completed a course in eye enucleation and has been certified as competent to enucleate eyes by an accredited school of medicine operating within North Carolina. (1969, c. 84, s. 1; 1971, c. 873, s. 1; 1975, c. 32, ss. 1, 2.)

Editor's Note. — The 1975 amendment repealed subdivision (9), which formerly defined "Certified embalmer," and added subdivision (10).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (9) and (10) are set out.

§ 90-220.2. **Persons who may execute an anatomical gift.**

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in G.S. 90-220.3:

- (1) The spouse,
- (2) An adult son or daughter,
- (3) Either parent,
- (4) An adult brother or sister,

(5) A guardian of the person of the decedent at the time of his death,

(6) Any other person authorized or under obligation to dispose of the body.

The persons authorized by this subsection may make the gift after or immediately before death; provided, however, the guardian of the person of a ward may make the gift at any time during the guardianship and the gift shall become effective upon the death of the ward unless the guardianship shall have terminated before death.

(1977, c. 166, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977 added the proviso to the end of the second sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 90-220.3. Persons who may become donees; purposes for which anatomical gifts may be made. — The following persons, institutions and agencies may become donees of gifts of bodies or parts thereof for the purposes stated:

(5) The Commission of Anatomy for the distribution of such bodies or parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. (1969, c. 84, s. 1; 1975, c. 694, ss. 4, 5.)

Editor's Note. — The 1975 amendment inserted "institutions and agencies" in the introductory paragraph and added subdivision (5).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (5) are set out.

§ 90-220.4. Manner of executing anatomical gifts.

(d) The donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures, subject to the provisions of G.S. 90-220.7(b). In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

In respect to a gift of an eye, a qualified individual, as defined by G.S. 90-220.1(10), may enucleate eyes for such gift after the proper certification of death by a physician and upon the express direction of any physician other than the one who certified the death of the donor.

(e) Any gift by a person designated in G.S. 90-220.2(b) shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message; provided, however, a guardian of the person of a ward, who makes a gift of all or any part of the ward's body prior to the ward's death, shall make the gift by a document signed by him and filed with the clerk of court having jurisdiction over the guardian. (1969, c. 84, s. 1; 1971, c. 873, s. 2; 1975, c. 32, s. 3; 1977, c. 166, s. 2.)

Editor's Note. — The 1975 amendment substituted the present second paragraph of subsection (d) for the former third sentence of the first paragraph of subsection (d), which authorized enucleation by a certified embalmer, and the former second paragraph of subsection (d), which provided that enucleation might be

performed by a certified embalmer when permitted by the next of kin.

The 1977 amendment, effective July 1, 1977, added the proviso at the end of subsection (e).

As the rest of the section was not changed by the amendment, only subsections (d) and (e) are set out.

§ 90-220.5. Delivery of document of gift. — If the gift is made by the donor or the guardian to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee at any time to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's or ward's death, the person in possession shall produce the document for examination. (1969, c. 84, s. 1; 1977, c. 166, s. 3.)

Editor's Note. — The 1977 amendment, in the first sentence and "or ward's" in the effective July 1, 1977, inserted "or the guardian" fourth sentence.

§ 90-220.6. Amendment or revocation of the gift. — (a) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

- (1) The execution and delivery to the donee of a signed statement, or
- (2) An oral statement made in the presence of two persons and communicated to the donee, or
- (3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or
- (4) A signed card or document found on his person or in his effects, and made known to the donee.

A guardian may amend or revoke the gift by the execution and delivery to the donee of a signed statement.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor or guardian in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a). (1969, c. 84, s. 1; 1977, c. 166, ss. 4, 5.)

Editor's Note. — The 1977 amendment, of subsection (a) and inserted "or guardian" in effective July 1, 1977, added the second sentence subsection (b).

§ 90-220.7. Rights and duties at death. — (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he shall, subject to the terms of the gift, authorize embalming and the use of the body in funeral services, upon request of the surviving spouse or other person listed in the order stated in G.S. 90-220.2(b). If the gift is of a part of the body, the donee, upon the death of the donor or ward and prior to embalming, shall, within 24 hours, cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor or ward at his death, or, if none, the physician who certifies the death. Such physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts with due care in accord with the terms of this Article or the anatomical gift laws of another state is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this Article are subject to the laws of this State prescribing powers and duties with respect to autopsies. (1969, c. 84, s. 1; 1977, c. 166, s. 6.)

Editor's Note. — The 1977 amendment, third sentence of subsection (a) and in subsection effective July 1, 1977 inserted "or ward" in the (b).

§ 90-220.11. Giving of blood by persons 17 years of age or more. — Any person who is 17 years of age or more may give or otherwise donate his blood to any individual, hospital, blood bank or blood collection center without the consent of the parent or parents or guardian of such donor. Provided, however, that it shall be unlawful for any person under the age of 18 years to sell his blood. (1971, c. 10; c. 1093, s. 16; 1977, c. 373.)

Editor's Note. — The 1977 amendment age" in the first sentence and added the second substituted "17 years of age" for "18 years of sentence.

ARTICLE 16.

Dental Hygiene Act.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-226. Provisional license.

(d) Any person desiring to secure a provisional license shall make application therefor in the manner and form prescribed by the rules and regulations of the Board and shall pay the fee prescribed in G.S. 90-232. (1975, c. 19, s. 25.)

Editor's Note. — The 1975 amendment corrected an error by substituting "G.S. 90-232" for "G.S. 90-231" at the end of subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 90-231. Opportunity for licensee or applicant to have hearing.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 17.

Dispensing Opticians.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other

Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the

program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-236. What constitutes practicing as a dispensing optician. — Any one or combination of the following practices when done for pay or reward shall constitute practicing as a dispensing optician: Interpreting prescriptions issued by licensed physicians and/or optometrists; fitting glasses on the face; servicing glasses or spectacles; measuring of patient's face, fitting frames, compounding and fabricating lenses and frames, and any therapeutic device used or employed in the correction of vision, and alignment of frames to the face of the wearer, provided, however, that the provisions of this section shall not apply to students and apprentices. (1951, c. 1089, s. 3; 1977, c. 755, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added "provided, however, that the provisions of this section shall not apply to students and apprentices" to the end of the section.

§ 90-237. Qualifications for dispensing optician. — No person shall be issued a certificate of registration as a registered dispensing optician by the North Carolina State Board of Opticians hereinafter established:

- (1) Unless such person is qualified under the provisions of G.S. 90-240;
 - (2) Unless such person is at least 18 years of age;
 - (3) Unless such person has satisfactorily passed an examination conducted by the Board to determine his fitness to engage in the practice of a dispensing optician;
 - (4) Unless such person is of good moral character as evidenced by two letters of recommendation;
 - (5) Unless such person has completed one year of practical apprenticeship training by working full time under the supervision of a licensed optician and has demonstrated proficiency in the areas of measurement of the face, and fitting and adjusting glasses and frames to the face.
- (1951, c. 1089, s. 4; 1977, c. 755, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "18 years" for "21 years" in subdivision (2), substituted "satisfactorily passed an examination" for "passed a satisfactory examination" in subdivision (3), and added subdivisions (4) and (5).

§ 90-240. Qualifications for taking the examination; subjects examined. — Applicants to take the examination for dispensing opticians shall be high school graduates or equivalents with two years training in a recognized school of opticianry with a minimum of 1600 hours or in lieu thereof, five years of practical training and experience under a licensed optician with time spent in a recognized school credited as part of the apprenticeship period. The examination shall be confined to such knowledge as is essential to practice as a dispensing optician and shall show proficiency in the following subjects:

- Ophthalmic lens surface grinding;
- Prescription interpretation;
- Practical anatomy of the eye;

Theory of light;
 Edge grinding;
 Ophthalmic lenses;
 Measurements of face;
 Finishing, fitting, and adjusting glasses and frames to face.

An applicant for admission on the basis of practical training shall have worked full time under the supervision of a licensed optician with concentration in ophthalmic lens surface grinding, edge grinding, ophthalmic lenses, mounting and general bench work; and prescription interpretation. (1951, c. 1089, s. 7; 1977, c. 755, s. 3.)

Editor's Note. — The 1977 amendment, of the first paragraph and rewrote the second effective July 1, 1977, rewrote the first sentence paragraph.

§ 90-241. Fees required. — The fee to be paid by an applicant for examination to determine his or her fitness to receive a certificate of registration as a registered dispensing his or her fitness to receive a certificate of registration as a registered dispensing optician shall be thirty-five dollars (\$35.00); and if he shall successfully pass the examination, he shall pay the further sum of five dollars (\$5.00) on the issuance to him of the certificate of registration. Provided, that any person holding a certificate or license to practice as a dispensing optician in another state where the qualifications prescribed are equal to the qualifications required in this State may be licensed without examination upon the payment of the same fees as required of other applicants. (1951, c. 1089, s. 8; 1977, c. 755, s. 4.)

Editor's Note. — The 1977 amendment, dollars (\$35.00)" for "twenty dollars (\$20.00)" in effective July 1, 1977, substituted "thirty-five the first sentence.

§ 90-246. Yearly license fees. — For the use of the Board in performing its duties under this Article, every registered dispensing optician shall in each year after the year 1951 pay to the North Carolina State Board of Opticians a sum not exceeding forty dollars (\$40.00), the amount to be fixed by the Board, as a license fee for the year. Such payment shall be made prior to the first day of April in each year and in case of default in payment by a registered dispensing optician, his certificate of registration may be revoked by the Board at the next regular meeting of the Board, after notice as herein provided. But no license shall be revoked for nonpayment if the person so notified shall, before or at the time of consideration, pay his fee and such penalty as may be imposed by the Board. A penalty imposed on any one person so notified as a condition of allowing his license to stand shall not exceed five dollars (\$5.00). The Board may collect any dues or fees provided in this section by suit in the name of the Board. The notice hereinbefore mentioned shall be in writing addressed to the persons in default of the payments of dues herein mentioned at the last address shown by the records of the Board and shall be sent by the secretary of the Board by registered mail with proper postage attached at least 20 days before the date upon which revocation of the license is to be considered, and the secretary shall keep a record of the fact and the date of such mailing. The notice herein provided for shall state the time and place of consideration of revocation of license of persons to whom such notice is addressed. (1951, c. 1089, s. 13; 1977, c. 755, s. 5.)

Editor's Note. — The 1977 amendment, (\$40.00)" for "twenty-five dollars (\$25.00)" in effective July 1, 1977, substituted "forty dollars first sentence.

§ 90-249. Powers of the Board. — The Board shall have the power to make rules and regulations not inconsistent with the laws of the State of North Carolina to empower the Board to have authority to make rules and regulations with respect to the following areas of the field of opticianry in North Carolina:

- (1) Misrepresentation to the public
- (2) Baiting or deceptive advertising
- (3) Finding of repetitive violators of the law
- (4) Requiring of continuing education
- (5) Location of registrants in the State
- (6) Legally established optical place of business registered with Board
- (7) Photograph for files for identification purposes
- (8) Educational qualifications to sit for examination and subject matter
- (9) Terms of licensure examination and reexamination
- (10) Reinstatement of licensure
- (11) Renewal fees, late penalty (up to number of dollars)
- (12) Recognized schools of opticianry accredited by the National Academy of Opticians
- (13) Apprenticeship requirements and registration of apprentices
- (14) Additional training requisite to licensure.

The Board shall have the power to revoke any certificate of registration granted by it under this Article for conviction of crime.

The Board shall likewise have the power to revoke licenses and certificates of registration upon the finding by the Board that the holder of such certificate has been guilty of unethical methods of practice. It shall be considered unethical practice to advertise in any manner by words or phrases of similar import which convey or which are calculated to convey the impression to the public that the eyes are examined by persons licensed under this Article or by the use of words and phrases of a character tending to deceive or mislead the public or in the nature of price or baiting advertising; use of advertising directly or indirectly by any method or nature which seeks or solicits on any installment plan; house to house canvassing or peddling directly or through any agent or employee for the purpose of selling, fitting or supplying frames, mountings, lenses or other ophthalmic materials.

Any person whose certificate has been revoked for any cause may, after the expiration of 90 days, and within two years from the date of revocation, apply to the Board to have the same reinstated, and upon a showing satisfactory to the Board and in the discretion of the Board, the certificate of registration or license may be restored to such person.

The procedure for revocation and suspension of a license shall be in accordance with the provisions of Chapter 150[A] of the General Statutes. (1951, c. 1089, s. 16; 1953, c. 1041, s. 19; 1973, c. 1331, s. 3; 1977, c. 755, s. 6.)

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

The 1977 amendment, effective July 1, 1977, rewrote the first paragraph and added the present second paragraph.

ARTICLE 18.

Physical Therapy.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other

Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the

program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-265. Grounds for refusing licensure; revocation.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 18A.

Practicing Psychologists.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-270.2. Definitions.

(f) "Psychological examiner" is an individual, licensed within the meaning of this Article, who offers to render, or renders professional psychological services such as interviewing or administering and interpreting tests of mental abilities, interests, aptitudes, and personality characteristics for such purposes as psychological evaluation, or for educational, vocational or personnel selection, guidance or placement. The psychological examiner does not engage in overall personality appraisal or classification, personality counseling or personality readjustment techniques except under qualified supervision in accordance with the duly adopted rules and regulations of the Board.

(1977, c. 670, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added "in accordance with the duly adopted rules and regulations of the Board" to the end of subsection (f).

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

§ 90-270.3. Practice of medicine and optometry not permitted. — Nothing in this Article shall be construed as permitting licensed practicing psychologists or psychological examiners to engage in any manner in all or any of the parts of the practice of medicine or optometry licensed under Articles 1 and 6 of Chapter 90 of the General Statutes, including, among others, the diagnosis and correction of visual and muscular anomalies of the human eyes and visual apparatus, eye exercises, orthoptics, vision training, visual training and

developmental vision. A licensed practicing psychologist or psychological examiner shall assist his client in obtaining professional help for all aspects of his problems that fall outside the boundaries of his own competence, including provision for the diagnosis and treatment of relevant medical or optometric problems. (1967, c. 910, s. 3; 1977, c. 670, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, deleted the former third sentence, which read "In rendering psychotherapy in any form, the licensed practicing psychologist or psychological

examiner shall develop liaison, communication, and meaningful collaboration with a physician, duly licensed to practice medicine in North Carolina, designated by the client."

§ 90-270.4. Exemptions to this Article. — (a) Nothing in this Article shall be construed as limiting the activities, services, and use of official title on the part of any person in the regular employ of a federal, State, county, or municipal government, or other political subdivision, or any agency thereof, or of a duly accredited or chartered educational institution, insofar as such activities and services are a part of the duties and responsibilities of his position. Such duties and responsibilities may include, but are not restricted to, teaching, writing, conducting research, the giving of public speeches or lectures, the giving of legal testimony, consulting with publishers, serving on boards, commissions, and review committees of public and nonprofit private agencies, with or without remuneration so long as such activities do not involve the practice of psychology as defined in this Article.

(e) Nothing in this Article shall be construed to limit or restrict physicians and surgeons or optometrists authorized to practice under the laws of North Carolina or to restrict qualified members of other professional groups who render counseling and other helping services including counselors, clergymen, social workers, and other similar professions, or to restrict qualified members of any other professional groups in the practice of their respective professions, provided they do not hold themselves out to the public by any title or description stating or implying that they are practicing psychologists or psychological examiners, or are licensed to practice psychology.

(1977, c. 670, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added "so long as such activities do not involve the practice of psychology as defined in this Article" to the end of subsection (a) and inserted "who render counseling and other helping services including counselors, clergymen, social workers, and other

similar professions, or to restrict qualified members of any other professional groups" near the middle of subsection (e).

As the rest of the section was not changed by the amendment, only subsections (a) and (e) are set out.

§ 90-270.5. Temporary licenses.

(f) An applicant for licensure as a practicing psychologist or as a psychological examiner, who meets all requirements for licensure except having passed the examination, may be issued a temporary license after receiving the degree required by G.S. 90-270.11 until he or she can take the next regularly scheduled examination and can be notified of the results. (1967, c. 910, s. 5; 1977, c. 670, s. 4.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added subsection (f).

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

The Practicing Psychologists Licensing Act does exempt professionals such as counselors

in school agencies, social workers, clergymen, and others from its requirements. — See opinion of Attorney General to Ruth E. Cook, Member, N.C. House of Representatives, 46 N.C.A.G. 205 (1977).

§ 90-270.6. Board of Examiners in Psychology; appointment; term of office; composition. — For the purpose of carrying out the provisions of this Article, there is hereby created a North Carolina State Board of Examiners of Practicing Psychologists, which shall consist of five members to be appointed by the Governor. At all times four members shall be licensed practicing psychologists, and the fifth shall be either a licensed psychological examiner or a licensed practicing psychologist. Due consideration shall also be given to the adequate representation of the various fields and areas of practice of psychology. Terms of office shall be three years. All terms of service on the Board expire June 30 in appropriate years. As the term of a member expires, or as a vacancy occurs for any other reason, the North Carolina Psychological Association, or its successor, shall, with the advice of the chairmen of the graduate departments of psychology in the State, for each vacancy, submit to the Governor a list of the names of three eligible persons, and from this list the Governor shall make the appointment for a full term, or for the remainder of the unexpired term, if any. Each Board member shall serve until his successor has been appointed. (1967, c. 910, s. 6; 1977, c. 670, s. 5.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, deleted the former second sentence, which required that at least two members of the Board be primarily engaged in graduate teaching or research in psychology and at least two members be primarily engaged in rendering services in psychology, rewrote the present second sentence, inserted "and areas of

practice" in the present third sentence, deleted "and of the first Board one member shall be appointed to serve for one year, two members for two years, and two members for three years" from the end of the present fourth sentence, and deleted the former sixth and seventh sentences, which related to appointment to the first Board.

§ 90-270.7. Qualifications of Board members. — Each member of the Board shall have the following qualifications:

- (2) He shall hold a doctoral or master's degree in psychology; (1977, c. 670, s. 6.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote subdivision (2).

As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (2) are set out.

§ 90-270.11. Licensing and examination. — (a) Practicing Psychologist. —

- (1) The Board shall issue a license to practice psychology to any applicant who pays an application fee of fifty dollars (\$50.00) and an additional examination fee of fifty dollars (\$50.00), who passes a satisfactory examination in psychology, and who submits evidence verified by oath and satisfactory to the Board that he:
 - a. Is at least 21 years of age;
 - b. Is of good moral character;
 - c. Has received his doctoral degree based on a planned and directed program of studies, the content of which was psychological in nature, from an accredited educational institution; and subsequent to receiving his doctoral degree has had at least two years of acceptable and appropriate supervised experience germane to his area of practice as a psychologist;
 - d. Has not within the preceding six months failed an examination given by the Board.
- (2) In order for a psychological examiner to be upgraded to a practicing psychologist, the applicant must comply with the requirements set

forth in subdivision (1) hereof; however, a fifty dollar (\$50.00) examination fee only shall be required.

(b) Psychological Examiner. —

(1) The Board shall issue a license to practice psychology to any applicant who pays an application fee of fifty dollars (\$50.00) and an additional examination fee of fifty dollars (\$50.00), who passes a satisfactory examination in psychology, and who submits evidence verified by oath and satisfactory to the Board that he:

- a. Is at least 21 years of age;
- b. Is of good moral character;
- c. Has received a master's degree in psychology from an accredited educational institution;
- d. Has not within the preceding six months failed an examination given by the Board.

(c) Examinations. — The examinations required by subsections (a) and (b) of this section shall be of a form and content prescribed by the Board, and may be oral, written, or both. The examinations shall be administered annually, or more frequently as the Board may prescribe, at a time and place to be determined by the Board. (1967, c. 910, s. 11; 1971, c. 889, ss. 2, 3; 1975, c. 675, ss. 1, 2; 1977, c. 620, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "an application fee" for "a fee," inserted "and an additional examination fee of fifty dollars (\$50.00)" near the beginning of subdivision (1) of subsections (a) and (b) and added subdivision (2) of subsection (a).

The 1977 amendment, effective July 1, 1977, in paragraph (1)c of subsection (a), inserted "planned and directed" and substituted "psychological in nature" for "primarily psychological" and "supervised experience

germane to his area of practice" for "professional experience." In paragraph (1)c of subsection (b), the amendment deleted "based on two academic years of graduate training" following "master's degree" and deleted "or in lieu thereof, such training and experience as the Board shall consider equivalent thereof" from the end.

Cited in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975).

§ 90-270.12: Repealed by Session Laws 1977, c. 670, s. 8, effective July 1, 1977.

§ 90-270.14. Renewal of licenses. — A license issued under this Article must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee of twenty dollars (\$20.00). If a license is not renewed on or before the first of January of each year, an additional fee of two dollars (\$2.00) shall be charged for late renewal. (1967, c. 910, s. 14; 1971, c. 889, s. 1; 1975, c. 675, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, increased the renewal fee in the second sentence from \$10.00 to \$20.00.

§ 90-270.15. Refusal, suspension, or revocation of licenses. — (a) A license applied for, or issued under this Article may be refused, suspended, or revoked by the Board upon proof that the person to whom the license was issued:

- (1) Has been convicted of a felony; or
- (2) Has been guilty of fraud or deceit in securing the license or any renewal thereof; or
- (3) Is an habitual drunkard or is addicted to the use of deleterious habit-forming drugs; or

- (4) Has been guilty of unprofessional conduct as defined by the then-current code of ethics published by the American Psychological Association.
- (5) Has violated any provision of this Article or of the duly adopted rules and regulations of the Board.
- (1977, c. 670, s. 9.)

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

The 1977 amendment, effective July 1, 1977, in subsection (a), inserted "suspended" in the introductory language and added subdivision (5).

As the rest of the section was not changed by the amendment, only the introductory language and subsection (a) are set out.

ARTICLE 19.

Sterilization Operations.

§ 90-271. Operation lawful upon request of married person or person over 18. — It shall be lawful for any physician or surgeon licensed by this State when so requested by any person 18 years of age or over, or less than 18 years of age if legally married, to perform upon such person a surgical interruption of vas deferens or Fallopian tubes, as the case may be, provided a request in writing is made by such person prior to the performance of such surgical operation, and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician or surgeon to such person as to the meaning and consequences of such operation; and provided, further, that the surgical interruption of Fallopian tubes is performed in a hospital licensed by the Department of Human Resources. (1963, c. 600; 1965, cc. 108, 941; 1971, c. 1231, s. 1; 1973, c. 476, s. 152; c. 998, s. 1; 1977, c. 7.)

Editor's Note. —

The 1977 amendment deleted "and acting in collaboration or consultation with at least one or

more physicians or surgeons so licensed" following "State" near the beginning of the section.

ARTICLE 20.

Nursing Home Administrator Act.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-279. Licensing function.**Editor's Note. —**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90-280. Fees; display of license. — (a) Each applicant for an examination administered by the Board and each applicant for a training program sponsored or supervised by the Board shall pay a fee set by the Board not to exceed the cost of administering the examination or of sponsoring or supervising the training program.

(b) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount set by the Board not to exceed one hundred fifty dollars (\$150.00). A license shall expire on the thirtieth day of September of the second year following its issuance and shall be renewable biennially upon payment of a renewal fee set by the Board not to exceed one hundred fifty dollars (\$150.00).

(c) Each person licensed as a nursing home administrator shall display his license certificate in a conspicuous place in his place of employment. (1969, c. 843, s. 1; 1977, c. 652.)

Editor's Note. — The 1977 amendment, effective Aug. 1, 1977, designated the provisions of the former first and second sentences as subsection (b) and the provisions of the former third sentence as subsection (c), added subsection (a), substituted "set by the Board not to exceed one hundred fifty dollars (\$150.00)" for "to be fixed by the Board, which fee shall not

exceed one hundred dollars (\$100.00)" at the end of the first sentence of subsection (b), substituted "set" for "fixed" and "one hundred fifty dollars (\$150.00)" for "one hundred dollars (\$100.00)" in the second sentence of subsection (b), and deleted "be required to" preceding "display his license certificate" in subsection (c).

ARTICLE 22.***Licensure Act for Speech and Language Pathologists and Audiologists.***

Repeal of Article. — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90-292. Declaration of policy. — It is declared to be a policy of the State of North Carolina that, in order to safeguard the public health, safety, and welfare; to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and from unprofessional conduct on the part of qualified speech and language pathologists and audiologists and to help assure the availability of the highest possible quality speech and language pathology and audiology services to the communicatively handicapped people of this State, it is necessary to provide regulatory authority over persons offering speech and language pathology and audiology services to the public. (1975, c. 773, s. 1.)

Editor's Note. — Session Laws 1975, c. 773, s. 3, makes the act effective Oct. 1, 1975.

§ 90-293. Definitions. — As used in this Article, unless the context otherwise requires:

- (1) "Audiologist" means any person who engages in the practice of audiology. A person is deemed to be an audiologist if he offers services to the public under any title incorporating the terms of "audiology," "audiologist," "audiological," "hearing clinic," "hearing clinician," "hearing therapist," or any similar title or description of service; provided, however, that a person licensed under Chapter 93D of the General Statutes may use the term "National Hearing Aid Society, Certified Hearing Aid Audiologist" except in public representations, advertising and telephone directory listings.
- (2) "Board" means the Board of Examiners for Speech and Language Pathologists and Audiologists.
- (3) "License" means a license issued by the Board under the provisions of this Article, including a temporary license.
- (4) "Person" means an individual, organization, or corporate body, except that only individuals can be licensed under this Article.
- (5) "Speech and language pathologist" means any person who represents himself to the public by title or by description of services, methods, or procedures as one who evaluates, examines, instructs, or counsels persons suffering from conditions or disorders affecting speech and language. A person is deemed to be a speech and language pathologist if he offers such services under any title incorporating the words "speech pathology," "speech pathologist," "speech correction," "speech correctionist," "speech therapy," "speech therapist," "speech clinic," "speech clinician," "language pathologist," "language therapist," "logopedist," "communication disorders," "communicologist," "voice therapist," "voice pathologist," or any similar title or description of service.
- (6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and disorders of hearing for the purpose of identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals and/or groups of individuals. A person licensed under this Article may not engage in the dispensing, fitting and selling of hearing aids unless that person is also licensed under Chapter 93D of the General Statutes. For the purpose of this subdivision, the words "habilitation" and "rehabilitation" shall include auditory training, speech reading, hearing aid use evaluation and recommendations, and fabrication of earmolds and similar accessories for clinical testing purposes only.
- (7) "The practice of speech and language pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language for the purpose of identifying, preventing, ameliorating, or modifying such disorders.
- (8) "Unethical conduct" means:
 - a. The obtaining of any fee by fraud or misrepresentation.
 - b. Employing directly or indirectly any suspended or unregistered person to perform any work covered by this Article.

- c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.
- d. Falsely representing that the services of a licensed physician will be employed in the practice of speech and language pathology or audiology, or using the term "doctor" in reference to anyone other than a licensed physician involved in said practice, or falsely implying in any manner that the services of a licensed physician are routinely used in said practice. (1975, c. 773, s. 1.)

§ 90-294. License required; Article not applicable to certain activities. —

(a) Licensure shall be granted in either speech and language pathology or audiology independently. A person may be licensed in both areas if he is qualified.

(b) No person may practice or hold himself out as being able to practice speech and language pathology or audiology in this State unless such person holds a current, unsuspended, unrevoked license issued by the Board as provided in this Article or holds a current, unsuspended, unrevoked license of endorsement pursuant to G.S. 90-296. The license required by this section shall be kept conspicuously posted in such person's office or place of business at all times. Nothing in this Article, however, shall be considered to prevent a qualified person licensed in this State under any other law from engaging in the profession for which such person is licensed.

(c) The provisions of this Article do not apply to:

- (1) The activities, services and use of an official title by a person employed by an agency of the federal government and solely in connection with such employment, except that an individual is not exempt from this Article who does work as a speech and language pathologist or audiologist outside the scope of such employment for which a fee may be paid directly or indirectly to such person by or for the recipient of the service.
- (2) The activities and services of a student or trainee in speech and language pathology or audiology pursuing a course of study in an accredited college or university, or working in a training center program approved by the Board, if these activities and services constitute a part of such person's course of study.
- (3) The activities and services of a person who has recently become a resident of the State whose application for licensing with or without examination has been received by the Board, pending disposition of such application, if the person was licensed to perform such services by a state with standards equivalent to or exceeding those of this State, as determined by the Board.
- (4) A person who holds a valid and current credential as a speech and language pathologist or audiologist issued by the North Carolina Department of Public Instruction or who is employed by the North Carolina Schools for the Deaf and Blind, if such person practices speech and language pathology or audiology in a salaried position solely within the confines or under the jurisdiction of the Department of Public Instruction or the Department of Human Resources respectively.

(d) Nothing in this Article shall apply to a physician licensed to practice medicine, or to any person employed by such a physician in the course of his practice of medicine.

(e) This Article shall not be construed to prevent any person licensed in this State under Chapter 93D of the General Statutes of North Carolina from the practice of fitting and selling hearing aids.

(f) The provisions of this Article do not apply to registered nurses and licensed practical nurses or other certified technicians trained to perform audiometric screening tests in industrial operations and whose work is under the supervision of a company physician, consulting physician, or licensed audiologist.

(g) The provisions of this Article do not apply to persons who are now or may become engaged in counseling or instructing laryngectomees in the methods, techniques or problems of learning to speak again.

(h) No license under this Article is required for persons originally employed by any agency of State government between October 1, 1975, and July 1, 1977, for the practice of speech and language pathology or audiology within and during the course and scope of employment with such agency. (1975, c. 773, s. 1; 1977, c. 692, s. 3.)

Editor's Note. -- The 1977 amendment, effective July 1, 1977, added subsection (h).

§ 90-295. Qualifications of applicants for licensure. -- To be eligible for licensure by the Board as a speech and language pathologist or audiologist, the applicant must:

- (1) Possess at least a master's degree in speech and language pathology or audiology or qualifications deemed equivalent by the Board under regulations duly adopted under this Article. Such degree or equivalent qualifications shall be from an accredited institution.
- (2) Submit transcripts from one or more accredited colleges or universities presenting evidence of the completion of 60 semester hours constituting a well-integrated program of course study dealing with the normal aspects of human communication, development thereof, disorders thereof, and clinical techniques for evaluation and management of such disorders.
 - a. Twelve of these 60 semester hours must be obtained in courses that provide information that pertains to normal development and use of speech, language and hearing.
 - b. Thirty of these 60 semester hours must be in courses that provide information relative to communication disorders and information about and training in evaluation and management of speech, language, and hearing disorders. At least 24 of these 30 semester hours must be in courses in the professional area (speech and language pathology or audiology) for which the license is requested, and no less than six semester hours may be in audiology for the license in speech and language pathology or in speech and language pathology for the license in audiology. Moreover, no more than six semester hours may be in courses that provide credit for clinical practice obtained during academic training.
 - c. Credit for study of information pertaining to related fields that augment the work of the clinical practitioner of speech and language pathology and/or audiology may also apply toward the total 60 semester hours.
 - d. Thirty of the total 60 semester hours that are required for a license must be in courses that are acceptable toward a graduate degree by the college or university in which they are taken. Moreover, 21 of those 30 semester hours must be within the 24 semester hours required in the professional area (speech and language pathology or audiology) for which the license is requested or within the six semester hours required in the other area.
- (3) Submit evidence of the completion of a minimum of 300 clock hours of supervised, direct clinical experience with individuals who present a

variety of communication disorders. This experience must have been obtained within the training institution or in one of its cooperating programs.

- (4) Present written evidence from a licensed and/or American Speech and Hearing Association certified speech and language pathologist or audiologist supervisor of nine months of full-time professional experience in which bona fide clinical work has been accomplished in the major professional area (speech and language pathology or audiology) in which the license is being sought. This experience must follow the completion of the requirements listed in subdivisions (1), (2) and (3). Full time is defined as at least nine months in a calendar year and a minimum of 30 hours per week. Half time is defined as at least 18 months in two calendar years and a minimum of 20 hours per week.
- (5) Pass an examination approved by the Board. The Board shall determine the subject and scope of the examination. Written examinations may be supplemented by such oral examinations as the Board shall determine. An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. (1975, c. 773, s. 1.)

§ 90-296. Examinations. — (a) An applicant for registration who has satisfied the requirements of G.S. 90-295 shall appear at a time and place and before persons the Board designates, to be examined by written and/or practical tests, in order to determine such person's qualifications to practice speech and language pathology and audiology.

(b) The Board shall give at least two examinations of the type prescribed in subsection (a) of this section in each year, and additional examinations as the volume of applications makes appropriate.

(c) An examination shall not be required as a prerequisite for a license for a person who holds a certificate of clinical competence issued by the American Speech and Hearing Association in the specialized area for which such person seeks a license. (1975, c. 773, s. 1.)

§ 90-297. Registration and issuance of licenses; licenses for persons licensed in other jurisdiction or engaged in practice on October 1, 1975. — (a) Upon payment of the fee, the Board shall license each applicant who satisfactorily completes the license requirements.

(b) If the Board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this Article for the practice of audiology or speech pathology, and that state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this Article are qualified to practice audiology or speech pathology, the Board may issue licenses to applicants therefor who hold current, unsuspended, and unrevoked certificates or licenses to practice audiology or speech pathology in the other state or jurisdiction upon payment of the license fee.

(c) The Board shall waive the examination and educational requirements for those applicants who, on October 1, 1975, are actively engaged in the practice of speech and language pathology or audiology upon proof of bona fide practice presented to the Board on or before February 28, 1978.

(d) Notice that proof of bona fide practice must be presented to the Board in accordance with subsection (c) of this section shall be given by the Board on or before December 1, 1977, to the following:

- (1) Members of the North Carolina Speech, Hearing and Language Association who are not licensed under this Article;

- (2) Speech and language pathologists and audiologists certified by the State Department of Public Instruction who are not licensed under this Article; and
- (3) All institutions reasonably known to have speech and language pathologists and audiologists in their employment. (1975, c. 773, s. 1; 1977, c. 692, ss. 1, 2.)

Editor's Note. — The 1977 amendment, 1978" for "December 31, 1975" at the end of effective July 1, 1977, substituted "February 28, subsection (c) and added subsection (d).

§ 90-298. Temporary license. — (a) An applicant who fulfills all of the requirements of G.S. 90-295 except those requirements relating to experience, as set forth in subdivision (4) of G.S. 90-295, and who has not previously applied to take the examination provided under subdivision (5) of G.S. 90-295, may apply to the Board for a temporary license.

(b) Upon receiving an application for a temporary license accompanied by a fee in an amount established by the General Assembly, the Board shall issue a temporary license, which entitles the applicant to practice speech and language pathology or audiology for a period of eight weeks after the conclusion of the next examination given after the date of issue.

(c) No temporary license shall be issued by the Board under this section unless the applicant shows to the satisfaction of the Board that the applicant is or will be supervised and trained by a person who holds a valid license under this Article.

(d) If a person who holds a temporary license issued under this section does not take the next examination given after the date of issue, the temporary license shall not be renewed. (1975, c. 773, s. 1.)

§ 90-299. Licensee to notify Board of place of practice. — (a) A person who holds a license shall notify the Board in writing of the address of the place or places where he engages or intends to engage in the practice of speech and language pathology or audiology.

(b) The Board shall keep a record of the places of practice of licensees.

(c) Any notice required to be given by the Board to a licensee may be given by mailing it to him at the address of the last place of practice of which he has notified the Board. (1975, c. 773, s. 1.)

§ 90-300. Renewal of licenses. — A licensee shall annually pay to the Board a fee in an amount established by the General Assembly for a renewal of his license. A 30-day grace period shall be allowed after expiration of a license during which the license may be renewed on payment of a fee in an amount established by the General Assembly. The Board may suspend the license of any person who fails to renew his license before the expiration of the 30-day grace period. After expiration of the grace period, the Board may renew such a license upon the payment of a fee in an amount established by the General Assembly. No person who applies for renewal whose license was suspended for failure to renew shall be required to submit to any examination as a condition of renewal. (1975, c. 773, s. 1.)

§ 90-301. Grounds for suspension or revocation of license. — Any person licensed under this Article may have his license revoked or suspended for a fixed period by the Board under the provisions of North Carolina General Statutes, Chapter 150, for any of the following causes:

- (1) His license has been secured by fraud or deceit practiced upon the Board.

- (2) Fraud or deceit in connection with his services rendered as an audiologist or speech pathologist.
- (3) Unprofessional conduct as defined by the rules established by the Board or violation of the code of ethics made and published by the Board.
- (4) Violation of any lawful order, rule or regulation rendered or adopted by the Board.
- (5) Any violation of the provisions of this Article. (1975, c. 773, s. 1.)

§ 90-302. Prohibited acts and practices. — No person may:

- (1) Sell, barter, transfer or offer to sell or barter a license.
- (2) Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice audiology or speech pathology.
- (3) Alter a license.
- (4) Use or attempt to use a valid license which has been purchased, fraudulently obtained, counterfeited or materially altered.
- (5) Make a false, material statement in an application for a North Carolina license. (1975, c. 773, s. 1.)

§ 90-303. Board of Examiners for speech and language pathology and audiology; qualifications, appointment and terms of members; vacancies; meetings; etc. — (a) There shall be a Board of Examiners for Speech and Language Pathologists and Audiologists, which shall be composed of five members, who shall all be residents of this State. Two members shall have a paid work experience in audiology for at least five years and hold a certificate of clinical competence in audiology of the American Speech and Hearing Association. Two members shall have paid work experience in speech pathology for at least five years and hold a certificate of clinical competence in speech pathology of the American Speech and Hearing Association. One member shall be a physician who is licensed to practice medicine in the State of North Carolina.

(b) The members of the Board shall be appointed by the Governor.

(c) The initial Board shall have members appointed for terms of one year, two years, three years, four years, and five years. Thereafter, Board members shall be appointed for a term of five years.

(d) Members of the Board shall receive no compensation for their service, but shall receive the same per diem, subsistence and travel allowance as provided in G.S. 138-5. (1975, c. 773, s. 1.)

§ 90-304. Powers and duties of Board. — The powers and duties of the Board are as follows:

- (1) To administer, coordinate, and enforce the provisions of this Article, establish fees, evaluate the qualifications of applicants, supervise the examination of applicants, and issue subpoenas, examine witnesses, and administer oaths, and investigate persons engaging in practices which violate the provisions of this Article.
- (2) To conduct hearings and keep records and minutes as necessary to an orderly dispatch of business.
- (3) To adopt responsible rules and regulations including but not limited to regulations which establish ethical standards of practice and to amend or repeal the same.
- (4) To issue annually a list stating the names of persons currently licensed under the provisions of this Article.
- (5) To employ such personnel as determined by its needs and budget.
- (6) To adopt seals by which it shall authenticate their proceedings, copies of the proceedings, records and the acts of the Board, and licenses. (1975, c. 773, s. 1.)

§ 90-305. Fees. — Persons subject to licensure under this Article shall pay the following fees to the Board:

(1) Application fee	\$25.00
(2) Examination fee	25.00
(3) Initial license fee	25.00
(4) Renewal license	25.00
(5) Temporary license	25.00
(6) Delinquency fee	10.00

(1975, c. 773, s. 1.)

§ 90-306. Penalty for violation. — Any person, partnership or corporation which engages in the professional practices required to be licensed under this Article without obtaining such license, and who is not expressly exempt from the provisions of this Article, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or be imprisoned for a period not exceeding six months, or both, in the discretion of the court. (1975, c. 773, s. 1.)

§ 90-307. Severability. — If any part of this Article is for any reason held unconstitutional, inoperative, or void, such holding of invalidity shall not affect the remaining portions of the Article; and it shall be construed to have been the legislative intent to pass this Article without such unconstitutional, invalid, or inoperative part therein; and the remainder of this Article, after the exclusion of such part or parts, shall be valid as if such parts were not contained therein. (1975, c. 773, s. 1.)

§§ 90-308 to 90-319: Reserved for future codification purposes.

ARTICLE 23.

Right to Natural Death; Brain Death.

§ 90-320. General purpose of Article. — (a) The General Assembly hereby recognizes that an individual's rights as a citizen of this State include the right to a peaceful and natural death. This Article is to establish a procedure for the exercise of that right and to state expressly the extent of a physician's obligation to preserve the life of his patient in situations where artificial means may be used to sustain the circulatory and respiratory functions for an indefinite period.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. (1977, c. 815.)

Editor's Note. — Session Laws 1977, c. 815, s. 2, makes this Article effective July 1, 1977.

§ 90-321. Right to a natural death. — (a) As used in this Article the term:

- (1) "Declarant" means a person who has signed a declaration in accordance with subsection (c);
- (2) "Extraordinary means" is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;

(3) "Physician" means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina.

(b) If a person has declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means; and the declaration has not been revoked in accordance with subsection (e); and

- (1) It is determined by the attending physician that the declarant's present condition is
 - a. Terminal; and
 - b. Incurable; and

(2) There is conformation of the declarant's present condition as set out above in subdivision (b)(1) by a physician other than the attending physician;

then extraordinary means may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician may rely upon a signed, witnessed, dated and proved declaration:

- (1) Which expresses a desire of the declarant that no extraordinary means be used to prolong his life if his condition is determined to be terminal and incurable; and
- (2) Which states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the extraordinary means; and
- (3) Which has been signed by the declarant in the presence of two witnesses who state that they (i) are not related within the third degree to the declarant or to the declarant's spouse and (ii) would not be entitled to any portion of the estate of the declarant upon his death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provided, and (iii) are not the attending physician, an employee of the attending physician or of a health facility in which the declarant is a patient, or of a nursing home or any group care home in which the declarant resides and (iv) is not a person who has a claim against any portion of the estate of the declarant at the time of the declaration; and
- (4) Which has been proved before a clerk or assistant clerk of superior court who certifies substantially as set out in subsection (d) below.

(d) The following form is specifically determined to meet the requirements above:

"Declaration of A Desire For A Natural Death

"I, being of sound mind, desire that my life not be prolonged by extraordinary means if my condition is determined to be terminal and incurable. I am aware and understand that this writing authorizes a physician to withhold or discontinue extraordinary means.

"This the day of,

Signature

"I hereby state that the declarant,, signed the above declaration in my presence and that I am not related to the declarant by blood or marriage and I would not be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant, or as an heir under the Intestate Succession Act if the declarant died on this date without a will. I also state that I am not the declarant's attending physician or an employee of the declarant's attending physician, or an employee of a health facility in which the declarant is a patient or an employee of a nursing home or any group care home where

the declarant resides. I further state that I do not now have any claim against the declarant.

Witness
Witness”

The clerk or the assistant clerk may, upon proper proof, certify the declaration as follows:

“Certificate

“I,, Clerk (Assistant Clerk) of Superior Court for County hereby certify that and
....., witnesses, appeared before me and swore that they witnessed ..
....., declarant, sign the attached declaration; and also swore that
at the time they witnessed the declaration (i) they were not related within the
third degree to the declarant or to the declarant’s spouse, and (ii) they would not
be entitled to any portion of the estate of the declarant upon the declarant’s
death under any will of the declarant or codicil thereto then existing or under
the Intestate Succession Act as it provided at that time, and (iii) they were not
a physician attending the declarant or an employee of an attending physician or
of a health facility in which the declarant was a patient or of a nursing home or
any group care home in which the declarant resided, and (iv) they did not have
a claim against the declarant. I further certify that I am satisfied as to the
genuineness and due execution of the declaration.

This the of
.....
Clerk (Assistant Clerk) of Superior
Court for the County of”

The above declaration may be proved by the clerk of the assistant clerk in the following manner:

- (1) Upon the testimony of the two witnesses; or
- (2) If the testimony of only one witness is available, then
 - a. Upon the testimony of such witness, and
 - b. Upon proof of the handwriting of the witness who is dead or whose testimony is otherwise unavailable, and
 - c. Upon proof of the handwriting of the declarant, unless he signed by his mark; or upon proof of such other circumstances as will satisfy the clerk or assistant clerk of the superior court as to the genuineness and due execution of the declaration.
- (3) If the testimony of none of the witnesses is available, such declaration may be proved by the clerk or assistant clerk
 - a. Upon proof of the handwriting of the two witnesses whose testimony is unavailable, and
 - b. Upon compliance with paragraph c of subdivision (2) above.

Due execution may be established, where the evidence required above is unavoidably lacking or inadequate, by testimony of other competent witnesses as to the requisite facts.

The testimony of a witness is unavailable within the meaning of this subsection when the witness is dead, out of the State, not to be found within the State, insane or otherwise incompetent, physically unable to testify or refuses to testify.

If the testimony of one or both of the witnesses is not available the clerk or the assistant clerk of superior court may, upon proper proof, certify the declaration as follows:

“Certificate

“I, Clerk (Assistant Clerk) of Court for the Superior Court of County hereby certify that based upon the evidence before me I am satisfied as to the genuineness and due execution of the attached declaration by, declarant, and that the declarant’s signature was witnessed by, and, who at the time of the declaration met the qualifications of G.S. 90-321(c)(3).

“This the day of,

.
Clerk (Assistant Clerk) of Superior
Court for County.”

(e) The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.

(f) The execution and consummation of declarations made in accordance with subsection (c) shall not constitute suicide for any purpose.

(g) No person shall be required to sign a declaration in accordance with subsection (c) as a condition for becoming insured under any insurance contract or for receiving any medical treatment.

(h) The withholding or discontinuance of extraordinary means in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. (1977, c. 815.)

§ 90-322. Brain death. — (a) If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state, and:

- (1) It is determined by the attending physician that the person’s present condition is:
 - a. Terminal; and
 - b. Incurable; and
 - c. There has been an irreversible cessation of brain function; and
- (2) There is confirmation of the person’s present condition as set out above in this subsection, by a majority of a committee of three physicians other than the attending physician; and
- (3) A vital function of the person is being sustained by extraordinary means; then, in addition to any other medically recognized criteria for determining death, the person may be pronounced dead.

(b) If a person has been pronounced dead in accordance with subsection (a) the extraordinary means to prolong life may be discontinued upon the direction and under the supervision of the attending physician at the request (i) of the person’s spouse, or (ii) of a guardian of the person, or (iii) of a majority of the relatives of the first degree, in that order. If none of the above are available then at the discretion of the attending physician the extraordinary means may be discontinued upon the direction and under the supervision of the attending physician.

(c) If a person has been determined to be dead in accordance with subsection (a) and the person is a donor within the meaning of G.S. 90-220.1(3), or a gift of

Chapter 90A.

Sanitarians and Water and Wastewater Treatment Facility Operators.

Article 3.

Certification of Wastewater Treatment Plant Operators.

Sec.

90A-37. Classification of wastewater treatment facilities.

Sec.

90A-38. Grades of certificates.

90A-39. Operator qualifications and examination.

90A-43. Promotion of training and other powers.

ARTICLE 1.

Sanitarians.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90A-11. Suspension and revocation of certificates.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 2.

Certification of Water Treatment Facility Operators.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90A-26. Revocation of certificate.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 3.

Certification of Wastewater Treatment Plant Operators.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 90A-37. Classification of wastewater treatment facilities. — The Board of Certification, with the advice and assistance of the Secretary of Natural Resources and Community Development, shall classify all wastewater treatment facilities under the jurisdiction of the North Carolina Environmental Management Commission, as provided in G.S. 130-161, and those operated by institutions and agencies of the State of North Carolina. In making the classification, the Board of Certification shall give due regard, among other factors, to the size of the facility, the nature of the wastes to be treated or removed from the wastewater, the treatment process to be employed, and the degrees of skill, knowledge and experience that the operator of the wastewater treatment facility must have to supervise the operation of the facility so as to adequately protect the public health and maintain the water quality standards in the receiving waters as assigned by the North Carolina Environmental Management Commission. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 90A-38. Grades of certificates. — The Board of Certification, with the advice and assistance of the Secretary of Natural Resources and Community Development, shall establish grades of certification for wastewater treatment plant operators corresponding to the classification of wastewater treatment facilities. The grades of certification shall be ranked so that a person holding a certification in the highest grade is thereby affirmed competent to operate wastewater treatment facilities in the highest classification and any treatment facility in a lower classification; a person holding a certification in the next highest grade is affirmed as competent to operate wastewater treatment facilities in the next-to-the-highest classification and any lower classification; and in a like manner through the range of grades of certification and classification of wastewater treatment facilities. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause. - -

§ 90A-39. Operator qualifications and examination. — The Board of Certification, with the advice and assistance of the Secretary of Natural Resources and Community Development, shall establish minimum requirements of education, experience and knowledge for each grade of certification for wastewater treatment plant operators, and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate to the end that prompt and fair consideration be given every application and the wastewater treatment facilities within the State may be adequately supervised by certified operators. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 90A-41. Revocation of certificate.**Editor's Note.—**

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 90A-43. Promotion of training and other powers. — The Board of Certification and the Secretary of Natural Resources and Community Development are authorized to take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article, including, but not limited to, the providing of training for operators and cooperating with educational institutions and private and public associations, persons, or corporations in the promotion of training for wastewater treatment personnel. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Chapter 91.

Pawnbrokers.

Sec.

91-4. Records to be kept.

91-5. Pawn ticket.

§ 91-4. Records to be kept. — Every pawnbroker shall keep a book in which shall be legibly written, at the time of each transaction involving the pawning, pledging or selling of used goods, articles or things between any person and the pawnbroker, his employee or agent, the following information:

An account and description of the used goods, articles, or things including if applicable, the manufacturer's name, the model, the model number, the serial number of the used goods, articles or things, and any engraved numbers or initials found on the goods, articles or things;

The amount of money paid or loaned thereon and the rate of interest to be paid, if applicable;

The date of the transaction; and

The name and residence of the person pawning, pledging, or selling the used goods, articles, or things.

The pawnbroker or his employee or agent shall require that the person pawning, pledging, or selling the used goods, articles, or things, present two forms of positive identification to him before the pawnbroker may complete any transaction regarding the pawning, pledging, or buying of used goods, articles, or things; provided, however, that the presentation of any one state or federal government issued identification containing a photographic representation imprinted thereon shall constitute compliance with the identification requirements of this paragraph. The pawnbroker or his employee or agent shall legibly record this identification information next to the person's name and residence in the book heretofore required to be kept.

Such book shall be a permanent record to be kept at all times on the premises of the place of business of the pawnbroker and shall be made available, during regular business hours, to any law-enforcement officer who requests to inspect the book. A copy of the records required to be kept by this section shall be filed within 48 hours of the transaction in the office of the sheriff of the county in which the pawnshop is located and the chief of police of the city or town issuing the license to such pawnbroker. (1915, c. 198, s. 3; C.S., s. 7003; 1977, c. 361, s. 1.)

Local Modification. —

By virtue of Session Laws 1977, c. 361, s. 3, Cumberland should be stricken from the Replacement Volume.

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section.

§ 91-5. Pawn ticket. — Every such pawnbroker shall at the time of each loan deliver to the person pawning or pledging any used goods, articles, or things, a ticket or memorandum or note signed by him containing the substance of the entry required to be made by him in his book as set out in G.S. 91-4. The said tickets or memorandums so issued shall be numbered consecutively and dated the day issued. (1951, c. 198, s. 3; C.S., s. 7004; 1965, c. 84; 1977, c. 361, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, in the first sentence, deleted "And" from the beginning, inserted "used" preceding "goods, articles, or things," and substituted "as set out in G.S. 91-4" for "as aforesaid, and a copy of the said ticket,

memorandum or note so given to the person pawning or pledging any goods, articles, or things of value, shall be filed within 48 hours in the office of the sheriff of the county and the chief of police of the city or town issuing the license to such pawnbroker."

Chapter 93.

Public Accountants.

Sec.

93-12. Board of Certified Public Accountant
Examiners.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 93-1. Definitions; practice of law.

Quoted in Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs., 25 N.C. App. 131, 212 S.E.2d 657 (1975).

§ 93-12. Board of Certified Public Accountant Examiners. — The name of the State Board of Accountancy is hereby changed to State Board of Certified Public Accountant Examiners and said name State Board of Certified Public Accountant Examiners is hereby substituted for the name State Board of Accountancy wherever the latter name appears or is used in Chapter 93 of the General Statutes. Said Board is created as an agency of the State of North Carolina and shall consist of four persons to be appointed by the Governor, all of whom shall be holders of valid and unrevoked certificates as certified public accountants issued under the provisions of this Chapter. Members of the Board shall hold office for the term of three years and until their successors are appointed. Appointments to the Board shall be made under the provisions of this Chapter as and when the terms of the members of the present State Board of Accountancy expire; provided, that all future appointments to said Board shall be made for a term of three years expiring on the thirtieth day of June. The powers and duties of the Board shall be as follows:

- (5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed examinations to the satisfaction of the Board, in "theory of account," "practical accounting," "auditing," "commercial law," and other related subjects.

From and after July 1, 1961, any person shall be eligible to take the examination given by the Board who is a citizen of the United States, or has declared his intention of becoming such citizen, and has resided for at least one year within the State of North Carolina, is 21 years of age or over and of good moral character, submits evidence satisfactory to the Board that he has completed two years in a college or university,

or its equivalent, and shall have completed a course of study in accountancy in a school, college or university approved by the Board. Such applicant, in addition to passing satisfactorily the examination given by the Board, shall have practiced as an accountant as defined in G.S. 93-1(a) for a period of at least five years, or shall have had at least two years' experience on the field staff of a certified public accountant or a North Carolina public accountant in public practice, or shall have served two or more years under the direct supervision of a certified public accountant, as an internal revenue agent or special agent under a District Director of Internal Revenue, or on the field staff of the North Carolina State Auditor, or on the field staff of the Accounting Division of the North Carolina Utilities Commission, or with the United States Defense Contract Audit Agency, on the field staff of the office of the Treasurer of the State of North Carolina, or on the field staff of the Audit Agency of the North Carolina Department of Human Resources, or as a tax auditor of the North Carolina Department of Revenue and shall have the endorsement of three certified public accountants as to his eligibility. A master's or more advanced degree in economics or business administration from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such persons shall have had the required experience.

- (9) Adoption of Rules of Professional Conduct; Disciplinary Action. — The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants and public accountants engaged in the public practice of accountancy in this State. The rules so adopted shall be publicized and filed in the office of the Attorney General as provided by Chapter 150A. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or public accountant or to censure the holder of any such certificate for any one or combination of the following causes:
- a. Conviction of a felony under the laws of the United States or of any state of the United States.
 - b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.
 - c. Fraud or deceit in obtaining a certificate as a certified public accountant.
 - d. Dishonesty, fraud or gross negligence in the public practice of accountancy.
 - e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

Any disciplinary action taken shall be in accordance with the provisions of Chapter 150[A] of the General Statutes.

(1975, c. 107; 1975, 2nd Sess., c. 983, s. 69; 1977, c. 804, ss. 1, 2.)

Editor's Note.—

The 1975 amendment rewrote the second sentence of the second paragraph of subdivision (5).

The 1975, 2nd Sess., amendment substituted "filed in the office of the Attorney General as provided by Chapter 150A" for "a certified copy filed in the office of the Secretary of State of North Carolina within 60 days after adoption" in the second sentence of subdivision (9).

The 1977 amendment, in the second sentence of the second paragraph of subdivision (5), inserted "shall have practiced as an accountant as defined in G.S. 93-1(a) for a period of at least five years, or" and substituted "or on the field staff of the office of the Treasurer of the State of North Carolina, or on the field staff of the Audit Agency of the North Carolina Department of Human Resources, or as a tax auditor of the North Carolina Department of Revenue or" for

Chapter 93A.

Real Estate Brokers and Salesmen.

Sec.

93A-2. Definitions and exceptions.

93A-4. Applications for licenses; fees; qualifications; examinations; bond; privilege licenses; renewal or

Sec.

reinstatement of license; power to enforce provisions.

93A-6. Revocation or suspension of licenses by Board.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 93A-1. License required of real estate brokers and real estate salesmen.

The purpose of this Chapter, etc. —

In accord with original. See North Carolina Real Estate Licensing Bd. v. Aikens, 31 N.C. App. 8, 228 S.E.2d 493 (1976).

Chapter Must Be Strictly Construed. —

In accord with 2nd paragraph in original. See North Carolina Real Estate Licensing Bd. v. Aikens, 31 N.C. App. 8, 228 S.E.2d 493 (1976).

§ 93A-2. Definitions and exceptions. — (a) A real estate broker within the meaning of this Chapter is any person, partnership, association, or corporation who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others. A broker shall also be deemed to include a person, partnership, association, or corporation who for a fee sells or offers to sell the name or names of persons, partnerships, associations, or corporations who have real estate for rental, lease, or sale. (1975, c. 108.)

Editor's Note.—

The 1975 amendment added the second sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Constitutionality of Amendment. — The amendment to § 93A-2(a) enacted by Session

Laws 1975, c. 108, is unconstitutional as repugnant to Art. I, §§ 1 and 19, of the Constitution of North Carolina. North Carolina Real Estate Licensing Bd. v. Aikens, 31 N.C. App. 8, 228 S.E.2d 493 (1976).

§ 93A-4. Applications for licenses; fees; qualifications; examinations; bond; privilege licenses; renewal or reinstatement of license; power to enforce provisions.

(c) All licenses granted and issued by the Board under the provisions of this Chapter shall expire on the thirtieth day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such license may be effected at any time during the month of June preceding the date of expiration of such license upon proper application to the Board accompanied by the payment of a renewal fee of ten dollars (\$10.00) to the secretary-treasurer of the Board, provided, the Board may by regulation require the renewal of such licenses for periods not exceeding three years upon payment of a renewal fee of ten dollars (\$10.00) for each 12-month period; provided further, that in the event of the licensee's death, removal to another state or upon voluntary surrender of the renewed license the Board shall, upon written application by the licensee or his estate, (administrator, executor, or personal representative) refund the amount of the renewal fee prepaid for the unexpired license year or years other than the current year and the renewal receipt or pocket card shall contain notice of this refund provision. All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars (\$5.00) in addition to the required renewal fee. In the event a licensee fails to obtain a reinstatement of such license within 12 months after the expiration date thereof, the Board may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Board upon payment of a fee of one dollar (\$1.00) by the licensee.

(1975, c. 112.)

Editor's Note.—

The 1975 amendment, effective Jan. 1, 1976, added the two provisos at the end of the second sentence of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 93A-6. Revocation or suspension of licenses by Board. — (a) The Board shall have power to revoke or suspend licenses as herein provided. The Board may upon its own motion, and shall upon the verified complaint in writing of any persons, provided such complaint with the evidence, documentary or otherwise, presented in connection therewith, shall make out a prima facie case, hold a hearing as hereinafter provided and investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity, and shall have power to suspend or revoke any license issued under the provisions of this Chapter at any time where the licensee has by false or fraudulent representations obtained a license or has been convicted or has entered a plea of nolo contendere upon which a finding of guilty and final judgment has been entered in a court of competent jurisdiction in this State or in any other state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense or offenses involving moral turpitude or where the licensee in performing or attempting to perform any of the acts mentioned herein is deemed to be guilty of:

- (1) Making any substantial and willful misrepresentations, or
- (2) Making any false promises of a character likely to influence, persuade, or induce, or
- (3) Pursuing a course of misrepresentation or making of false promises through agents or salesmen or advertising or otherwise, or

- (4) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts, or
 - (5) Accepting a commission or valuable consideration as a real estate salesman for the performances of any of the acts specified in this Chapter, from any person, except the licensed broker by whom he is employed, or
 - (6) Representing or attempting to represent a real estate broker other than the broker by whom he is engaged or associated, without the express knowledge and consent of the broker with whom he is associated, or
 - (7) Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others, or
 - (8) Being unworthy or incompetent to act as a real estate broker or salesman in such manner as to safeguard the interests of the public, or
 - (9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter, or
 - (10) Any other conduct whether of the same or a different character from that hereinbefore specified which constitutes improper, fraudulent or dishonest dealing.
 - (11) For performing or undertaking to perform any legal service as set forth in G.S. 84-2.1 or any other such acts not specifically set forth in said section.
 - (12) Commingling the money or other property of his principals with his own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by a real estate broker acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, such accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest-bearing account and also provide for the disbursement of the interest thereon.
 - (13) Failure to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.
 - (14) Failure by a broker to deliver to the seller in every real estate transaction wherein he acts as a real estate broker, at the time such transaction is consummated, a complete detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same were disbursed.
 - (15) Violating any rule or regulation duly promulgated by the Board.
- (1975, c. 28.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, inserted "in North Carolina" near the beginning of subdivision (12) of subsection (a).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Strict Construction. — This section is penal in nature, is in derogation of the common law and must be strictly construed. *North Carolina Real Estate Licensing Bd. v. Woodard*, 27 N.C.

App. 398, 219 S.E.2d 271, cert. denied, 288 N.C. 731, 220 S.E.2d 621 (1975).

Finding Inadequate to Suspend License. — Finding by the Real Estate Licensing Board that "there is substantial evidence" that a real estate agent acted in violation of subdivision (8) of subsection (a) in certain respects is insufficient to support a suspension of the agent's license since it is necessary for the Board to find that the agent "is deemed guilty of" a violation of the statute before his license can be suspended. *North Carolina Real Estate Licensing Bd. v. Woodard*, 27 N.C. App. 398, 219 S.E.2d 271, cert. denied, 288 N.C. 731, 220 S.E.2d 621 (1975).

Chapter 93B.**Occupational Licensing Boards.**

Sec.

93B-5. Compensation and employment of board members.

§ 93B-5. Compensation and employment of board members. — (a) Board members shall receive as compensation for their services per diem not to exceed thirty-five dollars (\$35.00) for each day during which they are engaged in the official business of the board.

(b) Board members shall be reimbursed for all necessary travel expenses in an amount not to exceed that authorized under G.S. 138-6(a)(1), (2), and (3) for officers and employees of State departments.

(c) Board members shall be reimbursed for convention registration fees not to exceed twenty-five dollars (\$25.00) per convention.

(d) Except as provided herein board members shall not be paid a salary or receive any additional compensation for services rendered as members of the board.

(e) Board members shall not be permanent, salaried employees of said board.

[(f) Repealed by Session Laws 1975, c. 765, s. 1, effective July 1, 1975.] (1957, c. 1377, s. 5; 1973, c. 1303, s. 1; c. 1342, s. 1; 1975, c. 765, s. 1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted "and registration fees" following "travel expenses" in subsection (b), substituted "(3)" for "(4)" near the end of that subsection, rewrote subsection (c), substituted "provided herein" for "provided in subsection (c) above" in subsection (d). The section as set out in the 1975 amendatory act did not include the provision added by Session Laws 1973, c. 1303, to this section as it stood before its amendment by Session Laws 1973, c. 1342. This provision was codified, in brackets, as subsection (f) of the

section as amended by the second 1973 act, and read: "No individual may be a member of more than one occupational licensing board at any one time."

Session Laws 1975, c. 765, s. 2, provides: "Members of the State Board of Barber Examiners are hereby authorized to continue the performance of their assigned duties until the expiration of the term of their current appointment. Any member hereafter appointed to the Board for a full term or an unexpired term shall be subject to the provisions of this act."

Chapter 93C.

Watchmakers.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 93C-7. Promulgation of regulations.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Chapter 93D.**North Carolina State Hearing Aid Dealers
and Fitters Board.**

Sec.

93D-3. North Carolina State Hearing Aid Dealers and Fitters Board; composition, organization, duties and compensation.

93D-5. Requirements for registration; examinations; apprentice licenses.

Sec.

93D-11. Annual fees; failure to pay; expiration of license; occupational instruction courses.

Repeal of Chapter. — This Chapter is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 93D-3. North Carolina State Hearing Aid Dealers and Fitters Board; composition, organization, duties and compensation.

(c) The Board shall:

- (1) Authorize all disbursements necessary to carry out the provisions of this Chapter;
- (2) Supervise and administer qualifying examinations to test and determine the knowledge and proficiency of applicants for licenses;
- (3) Issue licenses to qualified persons who apply to the Board;
- (4) Obtain audiometric equipment and facilities necessary to carry out the examination of applicants for licenses;
- (5) Suspend or revoke licenses and apprentice licenses pursuant to this Chapter;
- (6) Make and publish rules and regulations (including a code of ethics) which are necessary and proper to regulate the fitting and selling of hearing aids and to carry out the provisions of this Chapter;
- (7) Exercise jurisdiction over the hearing of complaints, charges of malpractice including corrupt or unprofessional conduct, and allegations of violations of the Board's rules or regulations, which are made against any fitter and seller of hearing aids in North Carolina;
- (8) Require the periodic inspection and calibration of audiometric testing equipment of persons who are fitting and selling hearing aids;
- (9) In connection with any matter within the jurisdiction of the Board, summon and subpoena and examine witnesses under oath and to compel their attendance and the production of books, papers, or other documents or writings deemed by the Board to be necessary or material to the inquiry. Each summons or subpoena shall be issued under the

hand of the secretary and treasurer or the president of the Board and shall have the force and effect of a summons or subpoena issued by a court of record. Any witness who shall refuse or neglect to appear in obedience thereto or to testify or produce books, papers, or other documents or writings required shall be liable to contempt charges in the manner set forth in Chapter 150[A] of the General Statutes. The Board shall pay to any witness subpoenaed before it the fees and per diem as paid witnesses in civil actions in the superior court of the county where such hearing is held;

- (10) Inform the Attorney General of any information or knowledge it acquires regarding any "price-fixing" activity whatsoever in connection with the sales and service of hearing aids;
- (11) Establish and enforce regulations which will guarantee that a full refund will be made by the seller of a hearing aid to the purchaser when presented with a written medical opinion of an otolaryngologist that the purchaser's hearing cannot be improved by the use of a hearing aid;
- (12) Fund, establish, conduct, approve and sponsor instructional programs for persons who hold an apprentice license and a license as well as for persons interested in obtaining adequate instruction or programs of study to qualify them for registration to the extent that the Board deems such instructional programs to be beneficial or necessary.

(1975, c. 550, s. 1.)

Editor's Note.—

The 1975 amendment added subdivision (12) in subsection (c).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 93D-5. Requirements for registration; examinations; apprentice licenses.

(c) No license shall be issued to any person until he has first held an apprentice license as set forth in G.S. 93D-9 for a period of at least one year; provided, that this subsection shall not apply to those persons qualified under G.S. 93D-6. (1969, c. 999; 1975, c. 550, s. 2.)

Editor's Note.—

The 1975 amendment added subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 93D-11. Annual fees; failure to pay; expiration of license; occupational instruction courses. — Every person who engages in the fitting and selling of hearing aids shall pay to the Board an annual license renewal fee of twenty-five dollars (\$25.00). Such payment shall be made prior to the first day of April in each year. In case of default in payment the license shall expire 30 days after notice by the secretary-treasurer to the last known address of the licensee by registered mail. The Board may reinstate an expired license upon the showing of good cause for late payment of fees, upon payment of said fees within 60 days after expiration of the license, and upon the further payment of a late penalty of ten dollars (\$10.00). After 60 days after the expiration date, the Board may reinstate the license for good cause shown upon application for reinstatement and payment of the late penalty of ten dollars (\$10.00) and renewal fee. The Board may require all licensees to successfully attend and complete a course or courses of occupational instruction funded, conducted or approved or sponsored by the Board on an annual basis as a condition to any license renewal and evidence of satisfactory attendance and completion of any such course or

courses shall be provided the Board by the licensee. (1969, c. 999; 1975, c. 550, s. 3.)

Editor's Note. — The 1975 amendment added the last sentence.

§ 93D-13. Discipline, suspension, revocation of licenses and apprentice licenses.

Editor's Note. — effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.
Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

Editor's Note. — The 1977 amendment in the first paragraph substituted "four representatives" for "three representatives" in the first sentence which reads "and three representatives from the public at large" to the end of the first sentence, revised the second and third sentences deleted the former footnotes which read "Thereafter, each member shall be appointed for a term of three years", and added the present third sentence.

§ 94-7. Contents of agreement. — Every apprentices agreement entered into under this Chapter shall contain:

- (4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than 144 hours per year provided, that in no case shall the combined instruction of hours of work and of required related and supplemental instruction of

Chapter 94.

Apprenticeship.

Sec.

94-2. Apprenticeship Council.

94-7. Contents of agreement.

Sec.

94-8. Approval of apprentice agreements; signatures.

§ 94-2. Apprenticeship Council. — The Commissioner of Labor shall appoint an Apprenticeship Council composed of four representatives each from employer and employee organizations respectively and three representatives from the public at large. One State official designated by the Department of Public Instruction and one State official designated by the Department of Community Colleges shall be a member ex officio of said council, without vote. The terms of office of the members of the Apprenticeship Council first appointed by the Commissioner of Labor shall expire as designated by the Commissioner at the time of making the appointment: two representatives each of employers and employees, being appointed for one year and one representative of the public at large being appointed for two years; and one representative each of employers, employees, and the public at large being appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. Each member of the Council not otherwise compensated by public moneys, shall be reimbursed for transportation and shall receive such per diem compensation as is provided generally for boards and commissions under the biennial maintenance appropriation acts for each day spent in attendance at meetings of the Apprenticeship Council. The Commissioner of Labor shall annually appoint one member of the Council to act as its chairman.

The Apprenticeship Council shall meet at the call of the Commissioner of Labor and shall aid him in formulating policies for the effective administration of this Chapter. Subject to the approval of the Commissioner, the Apprenticeship Council shall establish standards for apprentice agreement which in no case shall be lower than those prescribed by this Chapter, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of said Chapter, and shall perform such other functions as the Commissioner may direct. Not less than once a year the Apprenticeship Council shall make a report through the Commissioner of Labor of its activities and findings to the legislature and to the public. (1939, c. 229, s. 2; 1973, c. 476, s. 138; 1977, c. 896.)

Editor's Note. —

The 1977 amendment, in the first paragraph, substituted "four representatives" for "three representatives" in the first sentence, added "and three representatives from the public at large" to the end of the first sentence, rewrote

the second and third sentences, deleted the former fourth sentence, which read "Thereafter, each member shall be appointed for a term of three years," and added the present sixth sentence.

§ 94-7. Contents of agreement. — Every apprentice agreement entered into under this Chapter shall contain:

- (4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than 144 hours per year: Provided, that in no case shall the combined weekly hours of work and of required related and supplemental instruction of

the apprentice exceed the maximum number of hours of work prescribed by law for a person of the age of the apprentice.
(1977, c. 500, s. 1.)

Editor's Note. — The 1977 amendment deleted “and sex” following “a person of the age” near the end of subdivision (4).

As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 94-8. Approval of apprentice agreements; signatures. — No apprentice agreement under this Chapter shall be effective until approved by the Director. Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees as provided in G.S. 94-9, and by the apprentice, and if the apprentice is a minor, by either of the minor's lawful parents, or by any person, agency, organization or institution standing in loco parentis. Where a minor enters into an apprentice agreement under this Chapter for a period of training extending into his majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority. (1939, c. 229, s. 8; 1977, c. 550, s. 2.)

Editor's Note. — The 1977 amendment substituted “either of the minor's lawful parents, or by any person, agency, organization or institution standing in loco parentis” for “the minor's father: Provided, that if the father be dead or legally incapable of giving consent or

has abandoned his family, then by the minor's mother; if both father and mother be dead or legally incapable of giving consent, then by the guardian of the minor” at the end of the second sentence.

Chapter 95.

Department of Labor and Labor Regulations.

Article 1.

Department of Labor.

Sec.

- 95-2. Election of Commissioner; term; salary; vacancy.
95-4. Authority, powers and duties of Commissioner.

Article 2.

Maximum Working Hours.

- 95-17. Limitations of hours of employment; exceptions.

Article 3.

Various Regulations.

- 95-28.1. Discrimination against any person possessing sickle cell trait or hemoglobin C trait prohibited.

Article 7.

Board of Boiler Rules and Bureau of Boiler Inspection.

- 95-59. Commissioner of Labor empowered to appoint chief inspector; qualifications; salary.
95-68. Fees for internal and external inspections.
95-69.3 to 95-69.7. [Reserved.]

Article 7A.

Uniform Boiler and Pressure Vessel Act.

- 95-69.8. Short title.
95-69.9. Definitions.
95-69.10. Application of Article; exemptions.
95-69.11. Powers and duties of Commissioner.
95-69.12. Office of Director of Boilers and Pressure Vessels Division created; powers and duties.
95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties.
95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels.
95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission.
95-69.16. Inspections; report, certificates, fees.
95-69.17. Review of administrative decisions.
95-69.18. Inspection certificates required; misrepresentation as inspector.

Article 8.

Bureau of Labor for the Deaf.

Sec.

- 95-70 to 95-72. [Repealed.]

Article 11.

Minimum Wage Act.

- 95-86. Definition of terms.
95-87. Minimum wages.
95-88.1. Seasonal recreational employees.

Article 14.

Inspection Service Fees.

- 95-105. Fees authorized; elevators, escalators, etc.
95-106. Fees authorized; amusement devices, aerial tramways, etc.
95-107. Assessment and collection of fees; certificates of safe operation.
95-108. Disposition of fees.
95-109. Inspection of erection of rides.
95-110 to 95-115. [Reserved.]

Article 16.

Occupational Safety and Health Act of North Carolina.

- 95-131. Development and promulgation of standards; adoption of federal standards and regulations.
95-134. Establishment of Advisory Council.
95-156 to 95-160. [Reserved.]

Article 17.

The Uniform Wage Payment Law of North Carolina.

- 95-161. Definitions for purposes of Article.
95-162. Application of Article.
95-163. Weekly, biweekly or monthly pay period.
95-164. Employees who are separated from the payroll before paydays.
95-165. Unconditional payment of wages conceded to be due.
95-166. Withholding of wages.
95-167. Notification, posting, and records.
95-168. Provisions of Article may not be waived by agreement.
95-169. Enforcement.
95-170. Penalties.
95-171. Employee's remedies.
95-172. Rules and regulations.

ARTICLE 1.

Department of Labor.

§ 95-2. Election of Commissioner; term; salary; vacancy. — The Commissioner of Labor shall be elected by the people in the same manner as is provided for the election of the Secretary of State. The term of office of the Commissioner of Labor shall be four years, and the salary of the Commissioner of Labor shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. Any vacancy in the office shall be filled by the Governor, until the next general election. The office of the Department of Labor shall be kept in the City of Raleigh and shall be provided for as are other public offices of the State. (Rev., ss. 3909, 3910; 1919, c. 314, s. 4; C. S., s. 7310; 1931, c. 312, s. 2; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 349; 1943, c. 499, s. 2; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 5; 1967, c. 1130; c. 1237, s. 5; 1969, c. 1214, s. 5; 1971, c. 912, s. 5; 1973, c. 778, s. 5; 1975, 2nd Sess., c. 983, s. 20; 1977, c. 802, s. 42.11.)

Editor's Note. —

The 1975 amendment rewrote the second sentence, increasing the salary from \$31,000 to \$32,544.

The 1977 amendment, effective July 1, 1977, substituted the language beginning "and the salary of the Commissioner of Labor" for "he

shall receive a salary of thirty-two thousand five hundred forty-four dollars (\$32,544) a year, payable monthly" at the end of the second sentence.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 95-4. Authority, powers and duties of Commissioner. — The Commissioner of Labor shall be the executive and administrative head of the Department of Labor. In addition to the other powers and duties conferred upon the Commissioner of Labor by this Article, the said Commissioner shall have authority and be charged with the duty:

- (1) To appoint and assign to duty such clerks, stenographers, and other employees in the various divisions of the Department, with approval of said director of division, as may be necessary to perform the work of the Department, and fix their compensation, subject to the approval of the Department of Administration. The Commissioner of Labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subdivision shall not apply to the Industrial Commission, or the Division of Workmen's Compensation.
- (1957, c. 269, s. 1.)

Editor's Note. —

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in the first sentence of subdivision (1). See § 143-344(a).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (1) are set out.

ARTICLE 2.

Maximum Working Hours.

§ 95-17. Limitations of hours of employment; exceptions. — No employer shall employ a person for more than 56 hours in any one week, or more than 12 days in any period of 14 consecutive days or more than 10 hours in any one day, except that in case where two or more shifts of eight hours each or less per day are employed, any shift employee may be employed not to exceed double his regular shift hours in any one day whenever a fellow employee in like work is prevented from working because of illness or other cause: Provided, also, that the 10 hours per day maximum shall not apply to any employee when his employment is required for a longer period on account of an emergency due to breakdown, installation or alteration of equipment.

No provision in this Article shall be deemed to authorize the employment of any minor in violation of the provisions of any law expressly regulating the hours of labor of minors under 18 years of age or of any regulations made in pursuance of such laws.

Where the day is divided into two or more work periods for the same employee, the employer shall provide that all such periods shall be within 12 consecutive hours, except that in the case of employees of motion picture theatres, restaurants, dining rooms, and public eating places, such period shall be within 14 consecutive hours:

Provided, that the transportation of employees to and from work shall not constitute any part of the employees' work hours.

Nothing in this section or any other provisions of this Article shall apply to the employment of persons in agricultural occupations, cotton gins or in domestic service in private homes and boardinghouses, or to the work of persons over 18 years of age in bona fide office, foremanship, clerical or supervisory capacity, executive positions, learned professions, commercial travelers, seasonal hotels and clubhouses, commercial fishing or fruit- and vegetable-processing plants, employers employing a total of not more than three persons in each place of business, charitable institutions and hospitals: Provided further, that nothing in this section or in any other provision of this Article shall apply to railroads, common carriers and public utilities subject to the jurisdiction of the Interstate Commerce Commission or the North Carolina Utilities Commission, and utilities operated by municipalities or any transportation agencies now regulated by the federal government: Provided further, that the limitation on daily and weekly hours and the number of days in any period of 14 consecutive days provided for in this section shall not apply to any employee 18 years of age and over whose employment is covered by or in compliance with the Fair Labor Standards Act of 1938 (Public Law No. 718; 75th Congress; Chapter 676-3rd Session), as amended or as same may be amended: Provided, nothing in this Article shall apply to the State or to municipal corporations or their employees.

Provided further, nothing contained in this Article shall be construed to limit the hours of employment of any outside salesmen on commission basis: Provided, that this Article shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: one week prior to and including Easter, one week prior to and including Christmas, one week prior to and including Valentine's Day, and one week prior to and including Mother's Day. (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057; 1959, c. 629; 1961, c. 1070; 1965, c. 724; 1967, c. 998; 1973, c. 660, s. 1; 1975, c. 19, s. 26; 1977, c. 146.)

Editor's Note. —

The 1975 amendment corrected an error by inserting "Law" following "Public" in the reference to the Fair Labor Standards Act of 1938 in the fifth paragraph.

The 1977 amendment inserted "one week prior to and including Valentine's Day" near the end of the last paragraph.

Cited in *Nance v. Union Carbide Corp.*, Consumer Prods. Div., 397 F. Supp. 436 (W.D.N.C. 1975).

ARTICLE 3.*Various Regulations.*

§ 95-28.1. Discrimination against any person possessing sickle cell trait or hemoglobin C trait prohibited. — No person, firm, corporation, unincorporated association, State agency, unit of local government or any public or private entity shall deny or refuse employment to any person or discharge any person from employment on account of the fact such person possesses sickle cell trait or hemoglobin C trait. The term "sickle cell trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. The term "hemoglobin C trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests, provided, however, that this section shall not be construed to give employment, promotion, or layoff preference to persons who possess the above traits, or to prevent such persons being discharged for cause. (1975, c. 463, s. 1.)

Editor's Note. — Session Laws 1975, c. 463, s. 2, makes the act effective July 1, 1975.

ARTICLE 5.*Regulation of Employment Agencies.*

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

ARTICLE 7.

Board of Boiler Rules and Bureau of Boiler Inspection.

§ 95-54. Board of Boiler Rules created; members, appointment, and qualifications; terms of office; vacancies; meetings.

Cross Reference. — For the Uniform Boiler and Pressure Vessel Act, see § 95-69.8 et seq.

§ 95-59. Commissioner of Labor empowered to appoint chief inspector; qualifications; salary. — After the passage of this Article and at any time thereafter that the office may become vacant, the Commissioner of Labor shall appoint, and may remove for cause when so appointed, a citizen of this State who shall have had at the time of such appointment not less than five years' practical experience with steam boilers as a steam engineer, mechanical engineer, boilermaker or boiler inspector, or who has passed the same kind of examination as that prescribed for deputy or special inspectors in G.S. 95-63, to be chief inspector for a term of two years or until his successor shall have been appointed, at an annual salary to be fixed by the Commissioner of Labor with the approval of the Secretary of Administration. (1935, c. 326, s. 5; 1943, c. 469; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, Administration" for "assistant director of the effective July 1, 1975, substituted "Secretary of budget" at the end of the section.

§ 95-68. Fees for internal and external inspections. — The person using, operating or causing to be operated any boiler listed in this section, required by this Article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector, for the inspection of any such boiler, fees in accordance with the following schedule:

Miniature boilers, which do not exceed 16 inches inside diameter of shell, 100 pounds per square inch maximum allowable working pressure:	
General inspection	\$ 8.00
Fire tube boilers with hand holes only:	
Internal inspection	9.00
External inspection while under pressure	7.00
Fire tube boiler with manholes:	
Internal inspection	17.00
External inspection while under pressure	7.00
Water tube boilers (coil type):	
General inspection	9.00
Water tube boilers with not more than 500 square feet of heating surface:	
Internal inspection	9.00
External inspection while under pressure	7.00
Water tube boilers with more than 500 but not more than 3,000 square feet of heating surface:	
Internal inspection	17.00
External inspection while under pressure	7.00
Water tube boilers with more than 3,000 square feet of heating surface:	
Internal inspection	27.00
External inspection while under pressure	\$10.00

Provided, that four dollars (\$4.00) of each internal inspection fee shall be the fee for the certificate of inspection required by G.S. 95-64. The inspector shall give receipts for said fees and shall pay all sums so received to the Commissioner of Labor, who shall pay the same to the Treasurer of the State. The Treasurer of the State shall hold the fees collected under this section and under G.S. 95-64 in a special account to pay the salaries and expenses incident to the direct field inspection activities of this Article, the surplus, with the approval of the Director of the Budget, to be added to the appropriation for the supervision and administration of this Article within the Department of Labor. (1935, c. 326, s. 13; 1937, c. 125, s. 3; 1939, c. 361, s. 2; 1951, c. 544, s. 3; 1967, c. 490, s. 3; 1973, c. 1292, ss. 3-5; 1975, c. 541, s. 1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, for all fired pressure vessels, and Jan. 1, 1976,

for all unfired pressure vessels, increased all of the fees in the schedule.

§ 95-68.1. Other inspection fees.

Revision of Boiler Inspection Fees. — Session Laws 1975, c. 541, which amended § 95-68, provides, in s. 2:

"All other boiler inspection fees pursuant to General Statutes 95-68.1 are hereby revised in accordance with the following schedule:

- "Low pressure steam and hot water boilers, equipped only with hand holes and washout plugs \$ 8.00
- "Low pressure steam and hot water boilers, equipped with manhole 17.00

- "Fired hot water supply boilers and fired hot water heaters equipped with a manhole 10.00
- "Fired hot water supply boilers and fired hot water heaters without a manhole 5.00
- "Each unfired pressure vessel subject to inspection equipped with a manhole 10.00
- "Each unfired pressure vessel subject to inspection without a manhole 5.00"

§§ 95-69.3 to 95-69.7: Reserved for future codification purposes.

ARTICLE 7A.

Uniform Boiler and Pressure Vessel Act.

§ 95-69.8. Short title. — This Article shall be known as the Uniform Boiler and Pressure Vessel Act of North Carolina. (1975, c. 895, s. 1.)

Editor's Note. — Session Laws 1975, c. 895, s. 13, makes the act effective Jan. 1, 1976.

§ 95-69.9. Definitions. — (a) The term "board" shall mean the North Carolina Board of Boiler and Pressure Vessel Rules;

(b) The term "boiler" shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. This term "boiler" shall also include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves;

(c) The term "Commissioner" shall mean the North Carolina Commissioner of Labor;

(d) The term "Director" shall mean the individual appointed by the Commissioner to hold the office of Director of the Boiler and Pressure Vessel Division within the Department of Labor;

(e) The term "inspection certificate" shall mean certification by the Director that a boiler or pressure vessel is in compliance with the rules and regulations adopted under this Article;

(f) The term "inspector's commission" shall mean a written authorization by the Commissioner for a person who has met the qualifications set out in this Article to conduct inspections of boilers and pressure vessels;

(g) The term "pressure vessel" shall mean a vessel in which the pressure is obtained from an indirect source or by the application of heat from an indirect source or a direct source, other than those included within the term "boiler." (1975, c. 895, s. 2.)

§ 95-69.10. Application of Article; exemptions. — (a) This Article shall apply to all boilers and pressure vessels constructed, used, or designed for operation in this State including all new and existing installations which are operated in connection with business buildings, institutional buildings, industrial buildings, assembly buildings, educational buildings, public residential buildings, recreation buildings, and other public buildings. This Article shall also apply to boilers and hot water supply tanks, and heaters located in hotels, motels, tourist courts, camps, cottages, resort lodges, and similar places whenever the owner or operator advertises in any manner for transit patronage, or solicits such business for temporary abode by transit patrons.

(b) This Article shall not apply to:

- (1) Boilers and pressure vessels owned and/or operated by the federal government;
- (2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the U.S. Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the U.S. Department of Transportation;
- (3) To portable boilers and pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc or other minerals and metals;
- (4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families;
- (5) Pressure vessels used for transportation or storage of liquefied petroleum gas;
- (6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce;
- (7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains;
- (8) Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one-half cubic feet in volume and 600 PSIG pressure; or an inside diameter of six inches with no limitations on pressure;
- (9) Pressure vessels operating at a working pressure not exceeding 15 PSIG pressure;
- (10) Pressure vessels with a nominal water capacity of 120 gallons or less and containing water under pressure at ambient temperature, including those containing air, the compression of which serves as a cushion;
- (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.

(c) The construction requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

- (1) Heat input of 200,000 BTU HR;
- (2) Water temperature of 200 degrees F;
- (3) Nominal water capacity of 120 gallons;

provided that they are equipped with ASME Code and National Board certified safety relief valves and shall continue to be subject to field inspection. (1975, c. 895, s. 3.)

§ 95-69.11. Powers and duties of Commissioner. — The Commissioner of Labor is hereby charged, directed, and empowered:

- (1) To adopt, modify or revoke rules and regulations governing the construction, operation and use of boilers and pressure vessels;
- (2) To supervise the office of the Director of Boiler and Pressure Vessel Division;
- (3) To enforce rules and regulations adopted under authority of this Article;
- (4) To inspect boilers and pressure vessels covered under this Article;
- (5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article;
- (6) To enjoin violations of this Article in the civil and criminal courts of this State;
- (7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location and date of the last inspection of all boilers and pressure vessels to which this Article applies;
- (8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article;
- (9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed or operated in accordance with the provisions of this Article;
- (10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of such accident(s), and he shall have full subpoena powers in conducting said investigation;
- (11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels;
- (12) To establish reasonable fees for the examination and certification of inspectors;
- (13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules. (1975, c. 895, s. 4.)

§ 95-69.12. Office of Director of Boilers and Pressure Vessels Division created; powers and duties. — There is hereby created the office of Director of the Boiler and Pressure Vessel Division within the North Carolina Department of Labor. The person holding this office shall assist the Commissioner in carrying out the provisions of this Article in accordance with the provisions of Chapter 126 of the General Statutes. The Director is charged with the responsibility for the administration of this Article on a day-to-day basis.

The Director shall be primarily responsible for the inspection of boilers and pressure vessels subject to this Article and for the issuance of inspection certificates for those boilers and pressure vessels found suitable. He shall also be responsible for the collection of fees for the inspection of boilers and pressure vessels and transmitting the same to the State Treasurer, where they shall be

held in a special account to cover the operating expenses associated with the direct field inspections of this Article. All administrative functions pursuant to this Article shall be paid out of the State general fund. (1975, c. 895, s. 5.)

§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties. — (a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of nine members appointed by the Commissioner, of which three shall be appointed for a term of one year, three for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each. Of these nine appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers within this State, one a representative of boilermakers within this State who has had not less than five years' practical experience as a boilermaker, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of a boiler inspection and insurance company authorized to insure boilers and pressure vessels within the State, one a representative of the operating steam engineers in this State, one a contractor holding a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a recognized engineering college or a licensed professional engineer having boiler and pressure vessel experience. The Commissioner of Labor shall annually designate one member to serve as chairman.

(b) The Board shall meet at least twice annually and shall be responsible for:

- (1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the boiler code of the American Society of Mechanical Engineers and amendments and interpretations thereto made and approved by the council of the Society.
- (2) Devise and administer examinations to applicants seeking a certificate of competency as inspectors of boilers and pressure vessels in this State.
- (3) Issue, suspend, or revoke inspector's commission to inspectors of boilers and pressure vessels within this State.

(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established by the Advisory Budget Commission in accordance with Chapter 138 of the General Statutes. (1975, c. 895, s. 6; 1977, c. 788.)

Editor's Note. — The 1977 amendment, in the first sentence of subsection (a), substituted "nine members" for "seven members," "three shall be appointed" for "two shall be appointed," and "three for a term" for "two for a term," and in the third sentence of subsection (a), substituted "nine appointed members" for "seven appointed members" and "boiler manufacturers within this State, one a representative of boilermakers within this

State" for "boiler manufacturers or boilermakers," deleted "within this State" following "practical experience as a boilermaker" and "and" following "operating steam engineers in this State" and added the language beginning "and one a mechanical engineer" to the end of the sentence. The amendment also added the fourth sentence of subsection (a).

§ 95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels. — The Commissioner, after

consultation with the Board, may adopt, modify or revoke such rules and regulations governing the construction, installation, repair, alteration, inspection, use and operation of boilers and pressure vessels as he deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels.

The procedure for the adoption, modification or revocation of such rules and regulations shall be the same as that contained within the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 895, s. 7.)

§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission. — (a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the Director under this Article:

- (1) Boiler and Pressure Vessel Inspector. — Shall be a qualified individual appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so inspected;
- (2) Special Inspector. — Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person and/or property from explosions and accidents involving boilers and pressure vessels;
- (3) Owner-User Inspectors. — Shall be a qualified individual employed on a full-time basis by a company operating boilers or pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of boilers and pressure vessels owned or used by that company and where such inspection program is under the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) Inspector's Commission. — Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating boilers and/or pressure vessels for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a certificate of competency.

A commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to the Director. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

(c) Qualifications for Certificates of Competency. — To be entitled to a certificate of competency, as one of the above type inspectors, an individual must:

- (1) Have passed an examination provided and administered by the Board;
or
- (2) Have passed an examination and been certified in a state having rules and regulations substantially similar to those effective within North Carolina; or
- (3) Hold a certificate of competency of the National Board of Boiler and Pressure Vessel Inspectors; and
- (4) Continue in the employ of the company requesting the certificate of competency from the Board. (1975, c. 895, s. 8.)

§ 95-69.16. Inspections; report, certificates, fees. — (a) All boilers and pressure vessels subject to the provisions of this Article shall be inspected by

an authorized inspector, as set out in G.S. 95-69.15, at such intervals and by such methods as the Commissioner may from time to time prescribe by regulation. In determining the frequency with which various categories of boiler and pressure vessels shall be inspected, the Commissioner shall give due consideration the hazard involved and need for protection of the public. Methods of inspection must provide an adequate procedure to insure the safety of individuals likely to be injured by an explosion or accident involving a boiler or pressure vessel.

(b) Upon completion of an inspection the authorized inspector shall file a report on the suitability of the boiler or pressure vessel inspected with the Director. The inspector shall attach the fee paid for the inspection to his report.

(c) Upon receipt of the inspector's report and fee, the Director shall determine whether or not a boiler or pressure vessel is in compliance with the rules and regulations adopted under this Article. If the Director determines it is in compliance he shall issue an inspection certificate authorizing use of the boiler or pressure vessel. When the Director determines a boiler or pressure vessel is not in compliance, he shall so notify the owner or user within 10 working days. No boiler or pressure vessel may be operated without an inspection certificate, except pressure vessels being operated under owner-user provision where administrative procedures of equal safety and competency have been approved by the Board and Commissioner. No more than 60 days grace period may be granted beyond the certificate expiration date. An individual whose boiler or pressure vessel is found in noncompliance may appeal that determination to the Commissioner within 30 days after notification of the decision is received. (1975, c. 895, s. 9.)

§ 95-69.17. Review of administrative decisions. — (a) Final decisions of the Board or the Director involving revocation or suspension of an inspector's commission or inspection certificate shall not be made until the aggrieved party has been afforded an opportunity for a hearing after notice has been given in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes.

(b) Final decisions by the Board or Director involving denial of an application for a certificate of competency, refusal to issue or renew an inspection certificate need not await a hearing on the merits. After the decision is conveyed to the affected party, that party shall have the right to appeal to the Commissioner for review within 30 days. The Commissioner shall afford the aggrieved party an opportunity for a hearing after which he may affirm, modify or revoke the decision below. The decisions of the Board or the Director within this category shall not be stayed pending review by the Commissioner.

(c) After review by the Commissioner of a decision of the Board or the Director, a party may obtain judicial review within 30 days in accordance with the Administrative Procedure Act. (1975, c. 895, s. 10.)

§ 95-69.18. Inspection certificates required; misrepresentation as inspector. — It shall be unlawful for any person, firm, partnership, association or corporation to operate or use any boiler or pressure vessel in this State, and to which this Article applies, without a valid inspection certificate issued by the North Carolina Department of Labor. Any person, firm, partnership, association or corporation found to be operating or using a boiler or pressure vessel without a valid inspection certificate shall be guilty of a misdemeanor and upon conviction be subject to a fine of one thousand dollars (\$1,000) or imprisonment for 30 days, or both in the discretion of the court.

Any person who knowingly and willfully misrepresents himself as an authorized inspector in North Carolina, shall be guilty of a misdemeanor and

upon conviction thereof be fined up to one thousand dollars (\$1,000) or imprisonment for six months, or both in the discretion of the court. (1975, c. 895, s. 11.)

ARTICLE 8.

Bureau of Labor for the Deaf.

§§ 95-70 to 95-72: Repealed by Session Laws 1975, c. 412, s. 1, effective July 1, 1975.

Cross Reference. — As to transfer of the Department of Labor to the Department of Bureau of Labor for the Deaf from the Human Resources, see note to § 168-14.

ARTICLE 10.

Declaration of Policy as to Labor Organizations.

§ 95-78. Declaration of public policy.

Editor's Note. —

For note entitled, "Application of Right-to-Work Laws in Multistate Workforce Situations," see 55 N.C.L. Rev. 685 (1977).

Sections 95-79 to 95-81 constitute the public policy of North Carolina with respect to the

right to work. *Poole & Kent Corp. v. C.E. Thurston & Sons*, 286 N.C. 121, 209 S.E.2d 450 (1974).

§ 95-79. Certain agreements declared illegal.

Applied in *Poole & Kent Corp. v. C.E. Thurston & Sons*, 286 N.C. 121, 209 S.E.2d 450 (1974).

§ 95-80. Membership in labor organization as condition of employment prohibited.

Editor's Note. — For note entitled, "Application of Right-to-Work Laws in Multistate Workforce Situations," see 55 N.C.L. Rev. 685 (1977).

Cited in *Poole & Kent Corp. v. C.E. Thurston & Sons*, 286 N.C. 121, 209 S.E.2d 450 (1974).

§ 95-81. Nonmembership as condition of employment prohibited.

Editor's Note. — For note entitled, "Application of Right-to-Work Laws in Multistate Workforce Situations," see 55 N.C.L. Rev. 685 (1977).

Cited in *Poole & Kent Corp. v. C.E. Thurston & Sons*, 286 N.C. 121, 209 S.E.2d 450 (1974).

ARTICLE 11.

Minimum Wage Act.§ 95-86. **Definition of terms.** — As used in this Article:

- (3) "Employee" includes any individual employed by an employer but shall not include:
- a. Any person employed as a farm laborer or farm employee;
 - b. Any person employed in domestic service or in or about a private home or in an eleemosynary institution primarily supported by public funds;
 - c. Any person engaged in the activities of an educational, charitable, religious or nonprofit organization where the relationship of employer-employee does not, in fact exist, or where the services rendered to such organizations are on a voluntary basis;
 - d. Newsboys, shoeshine boys, caddies on golf courses, baby sitters;
 - e. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;
 - f. Any person under the age of 18 in the employ of his father or mother;
 - g. Any person confined in any penal, corrective, or mental institution of the State or any of its political subdivisions;
 - h. Employees of boys' and girls' summer camps;
 - i. Any person under the age of 16, regardless of by whom employed;
 - j. Those employed in the seafood or fishing industry on a part-time basis or who normally work and are paid for in the amount of work accomplished.
 - k. Repealed by Session Laws 1975, c. 605, effective October 1, 1975.
- (5) "Tipped employee" shall mean any employee who customarily receives more than twenty dollars (\$20.00) a month in tips.

In determining the wage of a tipped employee, the amount paid to such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of fifty percent (50%) of the applicable minimum wage rate, except that in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Commissioner that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid to such employee by his employer shall be deemed to have been increased by such lesser amount.

An employer is not entitled to increase wages on account of tips as above provided unless the employer meets the following conditions:

The employee has been informed by the employer of the provisions of this subdivision, the employee is allowed to retain all of the tips he or she has received except that tip pooling is permissible among employees who customarily and regularly receive tips, the employer maintains for a period of three years accurate and complete records of hours worked, wages paid and tips received by each employee, such tips to be certified by the employee to the employer for each pay period, and the employer does not require any employee to remit tips to the employer for the use of the employer in discharging the minimum wage requirements of this Article. (1959, c. 475; 1961, c. 652; 1969, c. 34, s. 2; c. 218; 1971, c. 1231, s. 1; 1975, c. 605; 1977, c. 653; c. 672, s. 1.)

Editor's Note. — The 1975 amendment, effective Oct. 1, 1975, repealed paragraph k of subdivision (3), which related to persons who had reached their sixty-fifth birthday.

The first 1977 amendment, effective Oct. 1, 1977, added the present first, third and fourth paragraphs of subdivision (5) and inserted "to" preceding "such employee by his employer" near the beginning and near the end of the present second paragraph of subdivision (5).

The second 1977 amendment, effective July 1, 1977, deleted "ushers, doormen, concession

attendants and cashiers in theaters" from the end of paragraph d of subdivision (3).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (3) and (5) are set out.

§ 95-87. Minimum wages. — Every employer shall pay to each of his employees wages at a rate not less than two dollars and thirty cents (\$2.30) per hour beginning July 1, 1977, and two dollars and fifty cents (\$2.50) per hour beginning on the same day that the minimum wage as set by the Fair Labor Standards Act of 1938, as amended, equals or exceeds two dollars and fifty cents (\$2.50) per hour. This section shall not apply to part-time employees who work 16 hours or less per week if the establishment where such part-time employees are employed has three or less full-time employees at any one time. (1959, c. 475; 1963, c. 816; 1965, c. 229; 1969, c. 34, s. 1; 1971, c. 138; 1973, c. 802; 1975, c. 256, s. 1; 1977, c. 519.)

Editor's Note. —

The 1975 amendment increased the minimum wage per hour from \$1.80 to \$2.00 in the first sentence. Section 2 of the amendatory act provides that the act shall become effective Oct. 1, 1975, and shall apply only to those

establishments not covered by the Federal Fair Labor Standards Act.

The 1977 amendment substituted the language beginning "two dollars and thirty cents (\$2.30) per hour" for "two dollars (\$2.00) per hour" at the end of the first sentence.

§ 95-88.1. Seasonal recreational employees. — Notwithstanding the minimum wage rate set by G.S. 95-87, the minimum wage for any employee employed by an establishment which is a seasonal religious assembly or a seasonal amusement or recreational establishment shall be two dollars (\$2.00). A seasonal religious assembly or a seasonal amusement or recreational establishment is an establishment which does not operate for more than seven months in any calendar year, or during the preceding calendar year its average receipts for any six months of such year were not more than thirty-three and one-third per centum ($33\frac{1}{3}\%$) of its average receipts for the other six months of such year. This section shall be null and void effective July 1, 1979. (1977, c. 672, s. 2.)

Editor's Note. — Session Laws 1977, c. 672, s. 3, makes this section effective July 1, 1977.

ARTICLE 12.

Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions.

§ 95-98. Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.

This section does not justify denial by city of request to withhold union dues from paychecks of city employees. Local 660,

International Ass'n of Firefighters v. City of Charlotte, 518 F.2d 82 (4th Cir. 1975).

ARTICLE 14.

Inspection Service Fees.

§ 95-105. **Fees authorized; elevators, escalators, etc.** — The North Carolina Department of Labor is hereby authorized to assess and collect the following inspection service fees for the installation and alteration of elevators, escalators, dumbwaiters other than those installed or altered in restaurants and special equipment, based on the cost of installation or alteration:

Cost of Installation or Alteration	Unit Fee
\$0 — \$10,000	\$ 70
10,001 — 30,000	110
30,001 — 50,000	155
50,001 — 80,000	195
80,001 — 100,000	215
Over 100,000	260

The North Carolina Department of Labor is hereby authorized to assess and collect a fee of ten dollars (\$10.00) for the periodic inspection of elevators, escalators and dumbwaiters. (1975, c. 777, s. 1; 1977, c. 983.)

Editor's Note. — Session Laws 1975, c. 777, s. 6, makes the act effective Jan. 1, 1976. The 1977 amendment, effective Oct. 1, 1977, added the second paragraph.

§ 95-106. **Fees authorized; amusement devices, aerial tramways, etc.** — The North Carolina Department of Labor is hereby authorized to assess and collect the following inspection service fees for annual inspections for each location within the State of amusement devices, aerial passenger tramways and inclined railroads:

Type Inspection	Unit Fee
Amusement Devices	\$ 10
Gondolas, Chairlifts and Inclined Railroads	125
J- or T-Bars	56
Rope Tows	28

(1975, c. 777, s. 2.)

§ 95-107. **Assessment and collection of fees; certificates of safe operation.** — The assessment of the fees pursuant to this Article shall be made against the owner or operator of such equipment and shall be collected at the time of inspection. Certificates of safe operation shall be withheld by the Department of Labor until such time as the assessed fees are collected. (1975, c. 777, s. 3.)

§ 95-108. **Disposition of fees.** — All fees collected by the Department of Labor pursuant to this Article shall be deposited with the State Treasurer and shall be used exclusively for inspection purposes of the equipment referenced in this Article. (1975, c. 777, s. 4.)

§ 95-109. **Inspection of erection of rides.** — Inspection of erection of rides is related solely to carnivals and fairs. (1975, c. 777, s. 5.)

§§ 95-110 to 95-115: Reserved for future codification purposes.

ARTICLE 15.

Passenger Tramway Safety.

Repeal of Article. — This Article is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 95-123. Orders.

Editor's Note.—

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 16.

Occupational Safety and Health Act of North Carolina.

§ 95-131. Development and promulgation of standards; adoption of federal standards and regulations. — (a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary shall in all respects be the rules and regulations of the Commissioner of this State unless the Commissioner shall make, promulgate and publish an alternative State rule, regulation or standard as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. All standards and regulations promulgated under the federal act by the Secretary, and any modifications, revisions, or revocations in accordance with the authority conferred by the federal act, or any other federal act or agency relating to safety and health and adopted by the Secretary, shall become effective upon the date the same is filed by the Commissioner in the office of the Attorney General.

(1975, 2nd Sess., c. 983, s. 81.)

Editor's Note. —

The 1975, 2nd Sess., amendment substituted "Attorney General" for "Secretary of State" at the end of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 95-134. Establishment of Advisory Council. — (a) There is hereby established a State Advisory Council on Occupational Safety and Health consisting of 11 members, appointed by the Commissioner, composed of three representatives from management, three representatives from labor, four

representatives of the public sector with knowledge of occupational safety and occupational health professions and one representative of the public sector with knowledge of migrant labor. The Commissioner shall designate one of the members from the public sector as chairman and all members of the State Advisory Council shall be selected insofar as possible upon the basis of their experience and competence in the field of occupational safety and health.

(1977, c. 806.)

Editor's Note. — The 1977 amendment, in the first sentence of subsection (a), substituted "11 members" for "seven members," "three representatives" for "two representatives" in two places, and "four representatives" for "and

three representatives," and added "and one representative of the public sector with knowledge of migrant labor" to the end.

As the rest of the section was not changed by the amendment, it is not set out.

§ 95-135. Safety and Health Review Board.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 95-141. Judicial review.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§§ 95-156 to 95-160: Reserved for future codification purposes.

ARTICLE 17.

The Uniform Wage Payment Law of North Carolina.

§ 95-161. Definitions for purposes of Article. — (a) The term "Commissioner" means the Commissioner of Labor.

(b) The term "employee" includes any person suffered or permitted to work by an employer.

(c) The term "employer" means any individual, partnership, association, joint stock company, trust, corporation, administrator or executor of an estate, or the receiver, trustee, successor or assign of the same, employing any person. Provided, that any officer, agent, or supervisory personnel, having or sharing in the management responsibilities of a corporation, who shall knowingly violate any of the provisions of this Article shall be considered an employer and held jointly and severally liable with the corporation for said violation.

(d) The term "payday" shall mean that day designated for payment of wages due by virtue of the employment relationship.

(e) The term "pay period" shall mean a period of seven or 14 calendar days, or a calendar month.

(f) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

(g) The term "tip" shall mean any money or part thereof over and above the actual amount due a business for goods, food, drink, services or articles sold which is paid, given to or left for an employee by a patron or patrons of the business where the employee is employed. (1975, c. 413, s. 1; 1977, c. 826, s. 1.)

Editor's Note. — Session Laws 1975, c. 413, s. 14, makes the act effective Jan. 1, 1976. Session Laws 1975, c. 413, s. 13, contains a severability clause.

The 1977 amendment, effective Sept. 1, 1977, added subsection (g).

§ 95-162. Application of Article. — This Article shall apply only to employers and employees subject to the provisions of the North Carolina Minimum Wage Act as amended or as same may be amended. (1975, c. 413, s. 2.)

§ 95-163. Weekly, biweekly or monthly pay period. — (a) Every employer shall pay all wages due to his employees weekly, biweekly, or monthly, on paydays designated in advance by the employer, in lawful money of the United States or with checks on banks convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due.

(b) The employee shall receive on or before the current payday all the wages and tips accruing to said employee, as of the preceding pay period, by virtue of the employment relationship; however, nothing in this section shall prohibit tip pooling among employees. The employer shall not withhold any wages and tips as security for the performance of assigned tasks.

(c) Vacation pay, when it is a matter of employment practice or policy, or both, shall be considered wages pursuant to G.S. 95-161(f) when due. (1975, c. 413, s. 3; 1977, c. 826, s. 2.)

Editor's Note. — The 1977 amendment, effective Sept. 1, 1977, in subsection (b), inserted "or before" and "and tips" in the first sentence, added "however, nothing in this section shall

prohibit tip pooling among employees" to the end of that sentence, and substituted "wages and tips" for "wages from the employee" in the second sentence.

§ 95-164. Employees who are separated from the payroll before paydays. — (a) When an employer discharges an employee, the employer shall pay the employee's earned wages not later than the next regular payday.

(b) Whenever an employee voluntarily terminates the employment relationship, the employer shall pay the employee's earned wages not later than the next regular payday as provided under G.S. 95-163, either through the regular pay channels or by mail if requested by the employee.

(c) When work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the employer shall pay to such employee not later than the next payday, as designated under G.S. 95-163, either through the regular pay channels or by mail if requested by the employee, wages earned up to and including the time of actual suspension or layoff.

(d) If an employer fails to pay an employee wages required under subsection (a), (b), or (c) of this section, after the employee makes a demand for payment, such employer shall be additionally liable to the employee for liquidated damages in the amount of ten percent (10%) of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the day upon which payment was required or in an amount equal to the unpaid wages, whichever is less. Provided that, for the purpose of such liquidated damages, such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition. (1975, c. 413, s. 4.)

Editor's Note. — In this section as enacted by Session Laws 1975, c. 413, s. 4, subsections (b) and (c) referred to "section 2 of this act." It

appears that section 3 of the act, codified as § 95-163, was intended; and the reference has been corrected in the section as set out above.

§ 95-165. Unconditional payment of wages conceded to be due. — (a) In case of a dispute over the amount of wages due, the employer shall pay, without condition and within the time set by this Article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to, including those provided under this Article, as to any balance claimed.

(b) The acceptance by an employee of a payment under this section shall not constitute a release as to balance of his claim and any release required by an employer as a condition to payment shall be in violation of this Article and shall be null and void. (1975, c. 413, s. 5.)

§ 95-166. Withholding of wages. — No employer may withhold or divert any portion of an employee's wages unless:

- (1) The employer is required or empowered to do so by State or federal law; or
- (2) The employer has a written authorization from the employee for deductions of a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the Commissioner; or
- (3) The deductions are, pursuant to any rule or regulation, for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books. (1975, c. 413, s. 6.)

§ 95-167. Notification, posting, and records. — Every employer shall:

- (1) Notify his employees in writing, at the time of hiring, of the rate of pay, policies on vacation time and pay, sick leave and comparable matters, and the day, hour and place for payment of wages;
- (2) Make available to his employees in writing or through a posted notice maintained in a place accessible to his employees, employment practices and policies with regard to vacation pay, sick leave, and comparable matters;
- (3) Notify his employees in writing, or through a posted notice maintained in a place accessible to his employees of any changes in the arrangements specified above prior to the time of such changes;
- (4) Furnish each employee with an itemized statement of deductions made from his wages under G.S. 95-166 for each pay period such deductions are made;
- (5) Keep posted in a place accessible to his employees an abstract of this Article furnished by the Commissioner; and
- (6) Make and preserve such records of the persons employed by him, including wage and hour records, and make such reports therefrom to the Commissioner, as the Commissioner shall from time to time prescribe by regulations for the purpose of carrying out the provisions of this Article. (1975, c. 413, s. 7.)

Editor's Note. — In this section as enacted by Session Laws 1975, c. 413, s. 7, subdivision (4) referred to "section 5 of this act." It appears

that section 6 of the act, codified as § 95-166, was intended, and the reference has been corrected in the section as set out above.

§ 95-168. Provisions of Article may not be waived by agreement. — Except as provided in G.S. 95-171, no provision of this Article may in any way be contravened or set aside by private agreement. (1975, c. 413, s. 8.)

Editor's Note. — This section as enacted by Session Laws 1975, c. 413, s. 8, began "Except as provided in section 10 of this act." It appears that the reference should have been to section 11

of the act, codified as § 95-171, and the correct reference has been used in the section as set out above.

§ 95-169. Enforcement. — (a) The Commissioner shall enforce and administer the provisions of this Article and the Commissioner or his authorized representative is empowered to hold hearings and to otherwise investigate charges of violations of this Article and to institute actions for penalties hereunder.

(b) The Commissioner or his authorized representative is empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any provision of this Article or any rule or regulation issued hereunder.

(c) The Commissioner or his authorized representatives shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and to take depositions and affidavits in any proceeding before said Commissioner.

(d) At the conclusion of any proceeding before the Commissioner or his authorized representative, he shall make findings of fact, conclusions of law, and order appropriate action be taken between the parties involved. If within 15 days after receipt of his order the parties have failed to comply, the Commissioner shall enforce his order by seeking execution in the District Court of North Carolina, Wake County Division.

(e) **Appeal Procedure.** — In the case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the District Court of North Carolina, on the application by the Commissioner filed in Wake County, to compel obedience through a proceeding for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court for a refusal to testify therein. (1975, c. 413, s. 9.)

§ 95-170. Penalties. — Any employer who willfully violates any provisions of G.S. 95-163, 95-164, 95-166, 95-167 and 95-168 or fails to comply with any other requirement of this Article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each separate offense, or by imprisonment of not more than 30 days, or both in the discretion of the court. (1975, c. 413, s. 10.)

Editor's Note. — This section as enacted by Session Laws 1975, c. 413, s. 10, referred to violation of "any provisions of sections 2, 3, 5, 6 and 7 of this act." It appears that the intention was to provide a penalty for violation of sections

3, 4, 6, 7 and 8 of the act, codified as §§ 95-163, 95-164, 95-166, 95-167 and 95-168, and the references have been corrected in the section as set out above.

§ 95-171. Employee's remedies. — (a) Action by an employee to recover unpaid wages and/or liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in the behalf of himself or themselves, or such employee or employees may designate an agent or representative to maintain such action.

(b) Actions may be maintained by the Commissioner under G.S. 95-169 upon request by the employee made in the form of a complaint filed with the Commissioner. The Commissioner shall proceed as representative of the employee(s) to recover unpaid wages or enforce compliance with the provisions of this Article. The Commissioner shall have power to join various claimants in one preferred claim or lien against a single employer.

(c) The court in any action brought under this section shall, in addition to any judgment awarded plaintiff(s), allow costs of the action, including cost or fees of any nature, and reasonable attorney's fees to be paid by the defendant. Such attorney's fees in the case of actions brought under this section by the Commissioner shall be awarded to the State and remitted by the Commissioner to the Department of State Treasurer. The Commissioner shall not be required to pay the filing fee or other costs or fees of any nature or compile bond or other security of any nature in connection with such action or with proceedings supplementary thereto as a condition precedent to the availability of the Commissioner to any process in aid of such action or proceedings. (1975, c. 413, s. 11.)

Editor's Note. — In this section as enacted by Session Laws 1975, c. 413, s. 11, the first sentence of subsection (b) authorized actions to be maintained by the Commissioner "under

section 8 of this act." It appears that section 9 of the act, codified as § 95-169, was intended, and the reference has been corrected in the section as set out above.

§ 95-172. Rules and regulations. — The Commissioner is authorized to issue such rules and regulations as he determines necessary for the purposes of carrying out the provisions of this Article. (1975, c. 413, s. 12.)

Chapter 96.**Employment Security.****Article 1.****Employment Security Commission.**

Sec.

96-1. Title.

96-1.1 to 96-1.5. [Repealed.]

96-3. Employment Security Commission.

96-4. Administration.

96-5. Employment Security Administration Fund.

Sec.

96-9. Contributions.

96-10. Collection of contributions.

96-11. Period, election, and termination of employer's coverage.

96-12. Benefits.

96-13. Benefit eligibility conditions.

96-14. Disqualification for benefits.

96-15. Claims for benefits.

96-18. Penalties.

96-19. Enforcement of Employment Security Law discontinued upon repeal or invalidation of federal acts; suspension of enforcement provisions contested.

Article 2.**Unemployment Insurance Division.**

96-8. Definitions.

ARTICLE 1.*Employment Security Commission.*

§ 96-1. Title. — This Chapter shall be known and may be cited as the "Employment Security Law." Any reference to the Unemployment Compensation Commission shall be deemed a reference to the Employment Security Commission and all powers, duties, funds, records, etc., of the Unemployment Compensation Commission are transferred to the Employment Security Commission. (Ex. Sess., 1936, c. 1, s. 1; 1947, c. 598, s. 1; 1977, c. 727, s. 1.)

Editor's Note. —

The 1977 amendment, effective Jan. 1, 1978, added the second sentence.

§§ 96-1.1 to 96-1.5: Repealed by Session Laws 1977, c. 727, ss. 2-6, effective January 1, 1978.

§ 96-2. Declaration of State public policy.**Section 96-14 Prevails Over This Section. —**

Section 96-14, which sets out the specific grounds for disqualification of benefits, will prevail over the general policy provisions of this

section. In re Usery, 31 N.C. App. 703, 230 S.E.2d 585 (1976).

Applied in In re Beatty, 286 N.C. 226, 210 S.E.2d 193 (1974).

§ 96-3. Employment Security Commission.

(b) Divisions. — The Commission shall establish two co-ordinate divisions: the North Carolina State Employment Service Division, created pursuant to G.S. 96-20, and the Unemployment Insurance Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel and duties, except insofar as the Commission may find that such separation is impracticable. Notwithstanding any other provision of this Chapter, administrative organization of the agency shall be in accordance with that which the Commission finds most desirable in order to perform the duties and functions of the agency.

(1977, c. 727, s. 7.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, added the fourth sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 96-4. Administration.

(h) Oaths and Witnesses. — In the discharge of the duties imposed by this Chapter, the chairman and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Chapter.

(m) The Commission after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and subdivisions thereunder. The Commission shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the Commission by any employer. Hearings may be before the Commission or a Deputy Commissioner and shall be held in the central office of the Commission or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Commission and a determination of the law applicable to that evidence. The Commission shall provide for the taking of evidence by a hearing officer who shall be a member of the legal staff of the Commission. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the Commission and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Commission for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employing unit or employer either resides, maintains a place of business, or conducts business; however, the Commission may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the Commission or a Deputy Commissioner any party affected thereby shall be entitled to an appeal to the superior court. Before such party shall be allowed to appeal, he shall within 10 days after notice of such decision or determination, file with the Commission exceptions to the decision or the determination of the Commission, which exceptions will state the grounds of objection to such decision or determination. If any one of such exceptions shall be overruled then such party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the Commission, the appeal shall be to the superior court in term time but the decision or determination of the Commission upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Commission, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10 days after the notice of appeal has been served, file with the Commission exceptions to the decision or determination overruling the exception which statement shall assign the errors

complained of and the grounds of the appeal. Upon the filing of such statement the Commission shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or, unless the appellee objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties. If there be no exceptions to any facts as found by the Commission the facts so found shall be binding upon the court and it shall be heard by the judge at chambers at some place in the district, above mentioned, of which all parties shall have 10 days' notice.

(q) Notices of hearing shall be issued by the Commission or its authorized representative and sent by registered mail, return receipt requested, to the last known address of any employing unit, employers, persons, or firms involved. The notice shall be sent at least 10 days prior to the hearing date and shall contain notification of the place, date, hour, and purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the Commission or its authorized representative and shall order him to appear at the time, date and place shown thereon. Any bond or other undertaking required to be given in order to suspend or stay any execution shall be given payable to the Employment Security Commission of North Carolina. Any such bond or other undertaking may be forfeited or sued upon as are any other undertakings payable to the State.

(1977, c. 727, ss. 8-10.)

Editor's Note. —

Session Laws 1977, c. 727, ss. 8 and 10, effective Jan. 1, 1978, deleted "of an appeal tribunal" following "the chairman" near the beginning of subsection (h) and rewrote subsection (q). Section 9 of c. 727, in subsection (m), rewrote the third sentence, added the present fourth sentence, substituted "recorded" for "stenographically reported" in the present sixth sentence, deleted "in Raleigh" from the end of the present seventh sentence, inserted "or a Deputy Commissioner" in the present eighth sentence, and inserted "or, unless the appellee objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County" in the present fourteenth sentence. Section 9 of c. 727 became effective on ratification, June 24, 1977.

As the rest of the section was not changed by the amendment, only subsections (h), (m) and (q) are set out.

Applicability of State Personnel Commission System and Administrative Procedure Act. — Effective February 1, 1976, pursuant to § 126-2 et seq., a State Personnel Commission system is established which provides for due process rights of State employees and also provides that the Administrative Procedure Act, Chapter 150A of the General Statutes of North Carolina, shall apply to hearings before the Personnel Commission. *Nantz v. Employment Security Comm'n*, 28 N.C. App. 626, 222 S.E.2d 474, aff'd, 290 N.C. 473, 226 S.E.2d 340 (1976).

Due Process Rights of Employees. — To acknowledge that constitutional restraints exist upon a State government in dealing with its employees is not to say that all such employees have a right to due process notice and hearing before they can be removed from their employment. *Nantz v. Employment Security Comm'n*, 28 N.C. App. 626, 222 S.E.2d 474, aff'd, 290 N.C. 473, 226 S.E.2d 340 (1976).

Scope of Review, etc. —

In appeals from the Employment Security Commission, the reviewing court may determine upon proper exceptions whether the facts found by the commission were supported by competent evidence and whether the findings so supported sustain the legal conclusions and the award made, but in no event may the reviewing court consider the evidence for the purpose of finding the facts for itself. *State ex rel. Employment Security Comm'n v. Paul's Young Men's Shop, Inc.*, 32 N.C. App. 23, 231 S.E.2d 157 (1977).

If the findings of fact of the Employment Security Commission are insufficient to enable the court to determine the rights of the parties upon the matters in controversy, the proceeding must be remanded to the end that the commission make proper findings. *State ex rel. Employment Security Comm'n v. Paul's Young Men's Shop, Inc.*, 32 N.C. App. 23, 231 S.E.2d 157 (1977).

Quoted in *Nantz v. Employment Security Comm'n*, 290 N.C. 473, 226 S.E.2d 340 (1976).

§ 96-5. Employment Security Administration Fund. — (a) **Special Fund.** — There is hereby created in the State treasury a special fund to be known as the Employment Security Administration Fund. All moneys which are deposited or paid into this fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. The Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the Executive Budget Act (G.S. 143-1 et seq.) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter. The fund shall consist of all moneys appropriated by this State, all moneys received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this Chapter: Provided, any interest collected on contributions and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment Security Administration Fund created by subsection (c) of this section. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Employment Security Administration Fund shall be deposited in said fund.

(b) **Replacement of Funds Lost or Improperly Expended.** — If any moneys received from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered balances in the Employment Security Administration Fund or any moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this State or its political subdivisions and matched by such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of those found necessary by the Secretary of Labor for the proper administration of this Chapter, it is the policy of this State that such moneys, not available from the Special Employment Security Administration Fund established by subsection (c) of this section, shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Employment Security Administration Fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the Secretary of Labor, the Commission shall promptly pay from the Special Employment Security Administration Fund such sum if available in such fund; if not available, it shall promptly report the amount required for such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount.

(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the Commission for the administration of this Chapter. Said fund shall be used by the Commission for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and also shall be used by the Commission for incidental extensions, repairs, enlargements or improvements. Refunds of interest allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the Executive Budget Act (G.S. 143-1 et seq.) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this section.

(e) Reed Bill Fund Authorization. — Subject to a specific appropriation by the General Assembly of North Carolina to the Employment Security Commission out of funds credited to and held in this State's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act, the Commission is authorized to utilize such funds for the administration of the Employment Security Law, including personal services, operating and other expenses incurred in the administration of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings or parts of buildings, suitable for use in this State by the Employment Security Commission, and for the payment of expenses incurred for the construction, maintenance, improvements or repair of, or alterations to, such real or personal property. Provided, that any such funds appropriated by the General Assembly shall not exceed the amount in the Unemployment Trust Fund which may be obligated for expenditure for such purposes; and provided that said funds shall not be obligated for expenditure, as herein provided, after the close of the two-year period which begins on the effective date of the appropriation. (Ex. Sess. 1936, c. 1, s. 13; 1941, c. 108, ss. 12, 13; 1947, c. 326, s. 5; c. 598, s. 1; 1949, c. 424, s. 2; 1951, c. 332, s. 18; 1953, c. 401, ss. 1, 5; 1977, c. 727, ss. 11-13.)

Editor's Note. —

The 1977 amendment, effective Jan. 1, 1978, substituted "G.S. 126-1 et seq." for "G.S. 143-35 et seq." at the end of the third sentence of subsection (a), deleted "subsequent to June 30, 1947" following "pursuant to this Chapter" near the end of the fifth sentence of subsection (a), deleted "after June 30, 1941" following "moneys received," "as of that date" following "Employment Security Administration Fund," and "after that date" following "or any moneys granted" near the beginning of the first

sentence of subsection (b), and deleted the former second sentence of subsection (b), which read "This subsection shall not be construed to relieve this State of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act." The amendment also substituted "G.S. 126-1 et seq." for "G.S. 143-35 et seq." at the end of the sixth sentence of subsection (c) and added subsection (e).

As subsection (d) was not changed by the amendment, it is not set out.

ARTICLE 2.*Unemployment Insurance Division.*

§ 96-8. Definitions. — As used in this Chapter, unless the context clearly requires otherwise:

- (4) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this Chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this Chapter unless such agent or employee is an employer subject to the tax imposed by the Federal Unemployment Tax Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work: Provided, however, that nothing herein, on or after July 1, 1939, shall be construed to apply to that part of the business of such "employers" as may come within the meaning of that term as it is defined in section one (a) of the Railroad Unemployment Insurance Act.
- (5) "Employer" means:
 - a. Any employing unit which (a) within the current or preceding calendar year, and which for some portion of a day in each of 20 different calendar weeks within such calendar year (whether or not such weeks are or were consecutive), has or had in employment one or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week); or (b) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars (\$1,500) or more. Provided further, for the purpose of this paragraph, "employment" shall include services which would constitute "employment" but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the Commission pursuant to subsection (l) of G.S. 96-4, and an agency charged with the administration of any other state or federal employment security law. Provided further, for the

purpose of this paragraph, "week" means a period of seven consecutive calendar days, and when a calendar week falls partly within each of two calendar years, the days of that week up to January 1 shall be deemed one calendar week, and the days beginning January 1, another such week.

- b. Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Chapter, or which acquired a part of the organization, trade, or business of another, which at the time of such acquisition was an employer subject to this Chapter; provided, such other would have been an employer under paragraph a of this subdivision if such part had constituted its entire organization, trade, or business; provided further, that G.S. 96-10, subsection (d), shall not be applicable to an individual or employing unit acquiring such part of the organization, trade or business. The provisions of G.S. 96-11(a) to the contrary notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this Chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this Chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the Commission within 60 days from the date the Commission mails him a notification of his liability and provided the Commission finds the predecessor was an employer at the time of such acquisition only because such predecessor had failed to make application for termination of coverage as provided in G.S. 96-11 of this Chapter. A successor under the provisions of this paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the Commission within 60 days from the date the Commission mails him a notification of his liability and the Commission finds that the predecessor could have terminated by making the application under G.S. 96-11 if the part acquired had constituted all of the predecessor's business.
- c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph a of this subdivision, provided the acquiring employing unit is owned, or controlled (by legally enforceable means or otherwise), directly or indirectly, by the same interests which own, or control (by legally enforceable means or otherwise), directly or indirectly, the employing unit from which the organization, trade, or business, or substantially all the assets were acquired.
- d. Any employing unit which, having become an employer under paragraphs a, b, or c, has not, under G.S. 96-11, ceased to be an employer subject to this Chapter; or

- e. For the effective period of its election pursuant to G.S. 96-11(c) any other employing unit which has elected to become fully subject to this Chapter.
- f. Any employing unit not an employer by reason of any other paragraph of this subdivision, for which within any calendar year, services in employment are or were performed with respect to which such employing unit is or was liable for any federal tax against which credit may or could have been taken for contributions required to be paid into a State Unemployment Insurance Fund; or which as a condition for approval of this Chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required, pursuant to such act, to be an "employer" under this Chapter; or any employing unit required to be covered by the Federal Unemployment Tax Act; provided, that such employer, notwithstanding the provisions of G.S. 96-11, shall cease to be subject to the provisions of this Chapter during any calendar year if the Commission finds that during such period the employer was not subject to the provisions of the Federal Unemployment Tax Act and any other provision of this Chapter.
- g. Any employing unit with its principal place of business located outside the State of North Carolina which engages in business within the State of North Carolina and which employing unit has in employment one or more individuals for some portion of a day in as many as 20 different calendar weeks in any period of 12 consecutive months or has had in employment and paid for service wages in any quarter in 12 consecutive calendar months in the amount of one thousand five hundred dollars (\$1,500) or more shall be deemed to be an employer subject to the other provisions of this Chapter.
- h. Any employing unit which maintains an operating office within this State from which the operations of an American vessel operating on navigable waters within or within and without the United States or ordinarily and regularly supervised, managed, directed, and controlled: Provided, the employing unit would be an employer by reason of any other paragraph of this subdivision.
- i. Any employing unit which acquired a part of the organization, trade or business of another which if treated as a single unit which such part acquired would be an employer under paragraph a of this subdivision if such part acquired had constituted all of the organization, trade or business of the predecessor, provided the acquiring employing unit is owned, or controlled (by legally enforceable means or otherwise), directly or indirectly, by the same interests which own, or control (by legally enforceable means or otherwise), directly or indirectly, the employing unit from which such part of the organization, trade, or business was acquired.
- j. Notwithstanding any other provision of this Chapter, "employer" means any institution of higher education or State hospital located in this State which is an agency or instrumentality of this State, or which is owned or operated by the State or an instrumentality of this State (or by this State and one or more states or their instrumentalities), provided such employing unit, in each of 20 different calendar weeks within the current or preceding calendar year (whether or not such weeks are or were consecutive), has or had in employment one or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), or in any calendar quarter in either the current or preceding calendar year paid for

services in employment wages of one thousand five hundred dollars (\$1,500) or more.

- k. Notwithstanding any other provision of this Chapter, "employer" means any nonprofit organization or a group of organizations (hereafter, where the words "nonprofit organization" are used in this Chapter, it shall include a group of nonprofit organizations), corporations, any community chest, fund, or foundation which are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals and which is exempt or may be exempted from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, provided such employing unit for some portion of a day in each of 20 different calendar weeks within the current or preceding calendar year (whether or not such weeks are or were consecutive) has or had in employment four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week).
- l. For the purposes of paragraphs j and k, "institution of higher education" means an educational institution in this State which (a) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such certificate; (b) is legally authorized in this State to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree or a program of training to prepare students for gainful employment in a recognized occupation; (d) is a public or other nonprofit institution; and (e) notwithstanding any of the foregoing provisions of this subsection, all universities, colleges, community colleges, and technical institutes in this State are institutions of higher education for the purposes of this section.
- For the purposes of these paragraphs, "hospital" means an institution licensed by the Department of Human Resources as authorized under Chapter 122 of the General Statutes of North Carolina, and an institution licensed by the Department of Human Resources as authorized under Chapter 131 of the General Statutes of North Carolina.
- m. For purposes of this Chapter, "secondary school" means any school not an institution of higher education as defined in G.S. 96-8(5)l.
- n. With respect to employment on and after January 1, 1978, any person or employing unit who (a) during any calendar quarter in the current calendar year or the preceding calendar year paid wages of twenty thousand dollars (\$20,000) or more for agricultural labor, or (b) on each of some 20 days during the current or preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day. Provided, that with respect to agricultural labor performed by a crew on and after January 1, 1978, the crew leader shall be deemed an employer if (1) Either of the requirements set forth in the first sentence of this paragraph are met; and (2) the crew members are not employed by another person within the meaning of the first sentence of this paragraph; (3) and if the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting

equipment, or any other mechanized equipment, which is provided by the crew leader. For purposes of this paragraph, the term "crew leader" means an individual who (1) furnishes individuals to perform agricultural labor for any other person, (2) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and (3) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

o. With respect to employment on and after January 1, 1978, any person who during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of one thousand dollars (\$1,000) or more for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

p. With respect to employment on and after January 1, 1978, any state and local governmental employing unit, including the State of North Carolina, a county board of education, a city board of education, the State Board of Education, the Board of Trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, any other agency of and within the State by which a teacher or other employee is paid, and any county, incorporated city or town, the light and water board or commission of any incorporated city or town, the board of alcoholic control of any county or incorporated city or town, county and/or city airport authorities, housing authorities created and operated under and by virtue of Chapter 157 of the General Statutes, redevelopment commissions created and operated under and by virtue of Article 37, Chapter 160 of the General Statutes, county and/or city or regional libraries, county and/or city boards of health, district boards of health, any other separate, local governmental entity, and the Retirement System.

q. With respect to employment on and after January 1, 1978, any nonprofit elementary and secondary school.

(6) a. "Employment" means service performed including service in interstate commerce, except employment as defined in the Railroad Retirement Act and the Railroad Unemployment Insurance Act, performed for wage or under any contract of hire, written or oral, express or implied, in which the relationship of the individual performing such service and the employing unit for which such service is rendered is, as to such service, the legal relationship of employer and employee. Provided, however, the term "employee" includes an officer of a corporation, but such term does not include (i) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (ii) any individual (except an officer of a corporation) who is not an employee under such common-law rules. An employee who is on paid vacation or is on paid leave of absence due to illness or other reason shall be deemed to be in employment irrespective of the failure of such individual to perform services for the employing unit during such period.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this State if:

1. The service is localized in this State; or
2. The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if

there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

3. The service, wherever performed, is within the United States, the Virgin Islands or Canada; such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada; and the place from which the service is directed or controlled is in this State.
- c. Services performed within this State but not covered under paragraph b of this subdivision shall be deemed to be employment subject to this Chapter, if contributions are not required and paid with respect to such services under an employment security law of any other state or of the federal government.
- d. Services not covered under paragraph b of this subdivision, and performed entirely without this State, with respect to no part of which contributions are required and paid under an employment security law of any other state or of the federal government, shall be deemed to be employment subject to this Chapter if the individual performing such service is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Chapter, and services covered by an election duly approved by the Commission in accordance with an arrangement pursuant to subsection (l) of G.S. 96-4 shall be deemed to be employment during the effective period of such election.
- e. Service shall be deemed to be localized within a state if:
 1. The service is performed entirely within such state; or
 2. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.
- f. The term "employment" shall include:
 1. Services covered by an election pursuant to G.S. 96-11, subsection (c), of this Chapter; and
 2. Services covered by an election duly approved by the Commission in accordance with an arrangement pursuant to G.S. 96-4, subsection (l), of this Chapter during the effective period of such election.
 3. Any service of whatever nature performed by an individual for an employing unit on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if such individual is employed on and in connection with such vessel when outside the United States: Provided, such service is performed on or in connection with the operations of an American vessel operating on navigable waters within or within and without the United States and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State: Provided further, that this subparagraph shall not be applicable to those services excluded in subdivision (6), paragraph g, subparagraph 6 of this section.

4. Any service of whatever nature performed by an individual for an employing unit on or in connection with an American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the aircraft it touches at a port in the United States, if such individual is employed on and in connection with such aircraft when outside the United States; provided such service is performed on or in connection with the operations of an American aircraft and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.
5. Notwithstanding any other provision of this Chapter, "employment" shall include any individual who performs services irrespective of whether the master-servant relationship exists, for remuneration for any employing unit:
 - (a) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk) or laundry or dry-cleaning services, for his principal;
 - (b) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations if the contract of services contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employment" under the provisions of this subsection if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.
6. Service of an individual who is a citizen of the United States, performed outside of the United States (except in Canada or the Virgin Islands), in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (b) or (e) of this subsection or the parallel provisions of another state's law), if:
 - (i) the employer's principal place of business in the United States is located in this State; or
 - (ii) the employer has no place of business in the United States, but
 - (I) the employer is an individual who is a resident of this State; or
 - (II) the employer is a corporation which is organized under the laws of this State; or
 - (III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any other state; or

(iii) none of the criteria of divisions (i) and (ii) of this subparagraph is met but the employer has elected coverage in this State, or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

(iv) an "American employer," for the purposes of this paragraph, means a person who is:

(I) an individual who is a resident of the United States; or

(II) a partnership if two thirds or more of the partners are residents of the United States; or

(III) a trust, if all of the trustees are residents of the United States; or

(IV) a corporation organized under the laws of the United States or of any state.

(V) for the purposes of this subparagraph, United States includes all the states, the District of Columbia, and the Commonwealth of Puerto Rico.

7. Services with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a State unemployment insurance fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this Chapter.

g. On and after January 1, 1978, the term "employment" includes services performed in agricultural labor when a person or employing unit (a) during any calendar quarter in the current calendar year or the preceding calendar year pays wages of twenty thousand dollars (\$20,000) or more for agricultural labor, or (b) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employs at least 10 individuals in employment in agricultural labor for some portion of the day. For purposes of this Chapter, the term "agricultural labor" includes all services performed: (1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife; (2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (3) in connection with the production or harvesting of crude gum (oleoresin) from a living tree, and the following products if processed by the original producer of crude gum from which derived; gum spirits of turpentine and gum resin, or in connection with the ginning of cotton or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; or (4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such

operator produced more than one half of the commodity with respect to which such service is performed; (B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in performance of service described in subparagraph (A), but only if such operators produced more than one half of the commodity with respect to which such service is performed. (C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; (D) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. Provided, such labor is not agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.

- h. On and after January 1, 1978, the term "employment" includes domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who pays cash remuneration of one thousand dollars (\$1,000) or more on or after January 1, 1978, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.
- i. On and after January 1, 1978, the term "employment" includes service performed for any State and local governmental employing unit. Provided, however, that employment shall not include service performed (a) as an elected official; (b) as a member of a legislative body or a member of the judiciary, of a State or political subdivision thereof; (c) as a member of the State National Guard or Air National Guard; (d) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (e) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.
- j. On and after January 1, 1978, the term "employment" includes services performed in any calendar year by employees of nonprofit elementary and secondary schools.
- k. The term "employment" shall not include:
 - 1. Prior to January 1, 1978, services performed in the employ of this State, or of any political subdivision thereof, or any instrumentality of this State or its political subdivisions except from and after January 1, 1972, services performed for employers as defined in G.S. 96-8(5)j, and 96-11(c)(3), and except as otherwise provided in this Chapter.
 - 2. Except with respect to service performed for an employer as defined in G.S. 96-8(5)j, service performed prior to January 1, 1978, in the employ of any other state or its political subdivisions, or of the United States Government, or of an instrumentality of any other state or states or their political subdivisions or of the United States and service performed in

the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Chapter, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this Chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, that if this State shall not be certified for any year by the Secretary of Labor under section 3304 of the Federal Internal Revenue Code of 1954, the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in G.S. 96-10(e) with respect to contributions erroneously collected.

3. Service with respect to which unemployment insurance is payable under an employment security system established by an act of Congress: Provided, that the Commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in G.S. 96-4(b) for general rules, to provide potential rights to benefits under this Chapter, acquired rights to unemployment insurance under act of Congress, or who have, after acquiring potential rights to unemployment insurance, under such act of Congress, acquired rights to benefits under this Chapter.
4. Prior to January 1, 1978, service performed in agricultural labor as defined in G.S. 96-8(6)g.
5. Prior to January 1, 1978, domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.
6. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if the individual is performing services on and in connection with such vessel or aircraft when outside the United States; or, service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by such individual as an ordinary incident to any such activity), except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (ii) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States).
7. Prior to January 1, 1978, services performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother; and on and after January 1, 1978, service performed by a child under the age of 21 in the employ of his father or mother or of a partnership consisting only of parents.

8. Service performed by an individual during any calendar quarter for any employing unit or an employer as an insurance agent or as an insurance solicitor, or as a securities salesman if all such service performed during such calendar quarter by such individual for such employing unit or employer is performed for remuneration solely by way of commission; service performed by an individual for an employing unit as a real estate agent or a real estate salesman as defined in G.S. 93A-2, provided, that such real estate agent or salesman is compensated solely by way of commission and is authorized to exercise independent judgment and control over the performance of his work.
9. Services performed in employment as a newsboy selling or distributing newspapers or magazines on the street or from house to house.
10. Except as provided in G.S. 96-8(6)f5(a), service covered by an election duly approved by the agency charged with the administration of any other state or federal employment security law in accordance with an arrangement pursuant to subdivision (l) of G.S. 96-4 during the effective period of such election.
11. Casual labor not in the course of the employing unit's trade or business.
12. Service in any calendar quarter in the employ of any organization exempt from income tax under the provisions of section 501(a) of the Internal Revenue Code of 1954 (other than an organization described in section 401(a) of said Internal Revenue Code of 1954) or under section 521 of the Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars (\$50.00).
13. Service in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance.
14. Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.
15. Services performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a

church or convention or association of churches; or (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (iv) as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training, unless a federal law, rule or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program; (v) after December 31, 1971, by an inmate for a hospital in a State prison or other State correctional institution or by a patient in any other State-operated hospital, and services performed by patients in a hospital operated by a nonprofit organization shall be exempt; (vi) after December 31, 1971, in the employ of a hospital, if such service is performed by a patient of such hospital; (vii) after December 31, 1977, by an inmate of a custodial or penal institution.

(9) "State" includes, in addition to the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(10) Total and partial unemployment.

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If he has payroll attachment but, during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday of the calendar week within which the payroll week ending date falls.

2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.

b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).

2. Partially unemployed, if he has payroll attachment but during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
 - c. No individual shall be considered unemployed if, with respect to the entire calendar week, he is receiving, has received, or will receive as a result of his separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph.
 - d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.
- (12) "Wages" means all remuneration for services from whatever source.
- (13) a. "Wages" shall include commissions and bonuses and any sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent or arbitration for loss of pay by reason of discharge and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, including tips which an employee receives directly from a customer and reports to the employer and which the employer considers as salary for the purpose of meeting minimum wage requirements, shall be estimated and determined in accordance with rules prescribed by the Commission: Provided, if the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to unemployment benefits only shall be determined in such manner as may by authorized regulations be prescribed. Such regulations shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals: Provided further, that the term "wages" shall not include the amount of any payment with respect to services to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical and hospitalization expenses in connection with sickness or accident disability, or (iv) death: Provided, further, wages shall not include payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.
- b. "Wages" shall not include any payment made to, or on behalf of, an employee or his beneficiary from or to a trust which qualifies under the conditions set forth in section 401(a)(1) and (2) of the Internal Revenue Code of 1954 or under or to an annuity plan which at the time of such payment meets the requirements of section 401(a)(3),

- (4), (5) and (6) of such code and exempt from tax under section 501(a) of such code at the time of such payment, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as beneficiary of the trust.
- (15) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.
- (17) a. Repealed by Session Laws 1977, c. 727, s. 33, effective January 1, 1978.
- b. Repealed by Session Laws 1977, c. 727, s. 33, effective January 1, 1978.
- c. As to claims filed on or after October 1, 1974, for claimants who do not have a benefit year in progress, "benefit year" shall mean the one-year period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed only if such individual, at the time the claim is filed, is unemployed, and has been paid wages in his base period totaling at least five hundred sixty-five dollars and fifty cents (\$565.50), and equal to at least one and one-half times his high-quarter wages, which high-quarter wages must equal at least one hundred and fifty dollars (\$150.00).
- d. As to claims filed on or after January 1, 1978, for claimants who did not have benefit years in progress, "benefit year" shall mean the 52 week period beginning with the Sunday of the calendar week with respect to which an individual first registers for work and files a valid claim for benefits. The requirements of sub-subdivision a above shall apply to such claims.
- (18) For benefit years established on and after July 1, 1953, the term "base period" shall mean the first four of the last six completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in subdivision (17) of this section. For benefit years established on and after January 1, 1978, the term "base period" shall mean the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in G.S. 96-8(17).
- (19) Repealed by Session Laws 1977, c. 727, s. 35, effective January 1, 1978.
- (20) The term "American vessel," as used in this Chapter, means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is performing service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state and the term "American aircraft" means an aircraft registered under the laws of the United States.
- (21) The words "Employment Security Law" as used in this Chapter mean any law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits.
- (22) Average Weekly Insured Wage. — "Average weekly insured wage" is the quotient obtained by dividing the total of the wages, as defined in G.S. 96-8(12) and (13), reported by all insured employers by the monthly average in insured employment under this Chapter during the immediately preceding calendar year and further dividing the quotient obtained by 52 to obtain a weekly rate. (For this computation the data as released annually in the Employment Security Commission's

publication "North Carolina Insured Employment and Wage Payment" shall be used). The quotient thus obtained shall be deemed to be the average weekly wage for such year.

- (23) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subdivision, the term "previously uncovered services" means services (a) which were not employment as defined in G.S. 96-8(6) and were not services covered pursuant to G.S. 96-11(c) at any time during the one-year period ending December 31, 1977; and (b) which (1) are agricultural labor as provided in G.S. 96-8(5)n and G.S. 96-8(6)g or domestic service as provided in G.S. 96-8(5)o and G.S. 96-8(6)h, or (2) are services performed by an employee of this State or of a local governmental unit, as provided in G.S. 96-8(5)p and G.S. 96-8(6)i or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in G.S. 96-8(5)r [G.S. 96-8(5)q] and G.S. 96-8(6)j; except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services. (Ex. Sess. 1936, c. 1, s. 19; 1937, c. 448, s. 5; 1939, c. 27, ss. 11-13; c. 52, ss. 6, 7; c. 141; 1941, cc. 108, 198; 1943, c. 377, ss. 31-34; c. 552, ss. 1, 2; 1945, c. 522, ss. 5-10; c. 531, ss. 1, 2; 1947, c. 326, ss. 7-12; c. 598, ss. 1, 5, 8; 1949, c. 424, ss. 3-8½; cc. 523, 863; 1951, c. 322, s. 1; c. 332, ss. 2, 3, 18; 1953, c. 401, ss. 1, 7-11; 1955, c. 385, ss. 3, 4; 1957, c. 1059, ss. 2-4; 1959, c. 362, ss. 2-6; 1961, c. 454, ss. 4-15; 1965, c. 795, ss. 2-5; 1969, c. 575, ss. 4-6, 15; 1971, c. 367; c. 673, ss. 5-13; c. 863; c. 1231, s. 1; 1973, c. 172, s. 1; c. 476, ss. 133, 152; c. 740, s. 2; c. 1138, ss. 1, 2; 1975, c. 226, s. 3; 1977, c. 727, ss. 14-36.)

Editor's Note. —

The 1975 amendment added paragraph m to subdivision (5).

The 1977 amendment, effective Jan. 1, 1978, made changes in subdivisions (4), (5), (6), (9), (10), (12), (13), (15), (17), and (18), deleted subdivision (19), which read "Wages payable to an individual with respect to covered employment performed prior to January 1, 1941, shall, for the purpose of G.S. 96-12 and 96-9, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable," and added subdivision (23).

Session Laws 1977, c. 727, s. 58, provides: "If U.S. Public Law 94-566 or the federal acts it amends should be adjudged unconstitutional or invalid in its or their application or stayed pendente lite as to State or local employees by a court of competent jurisdiction, then the coverage of those employees under this act is

automatically stayed or repealed to the extent of the adjudged inapplicability. The repeal shall be effective from the date of final disposition upon appeal or from the date of expiration of the right of appeal and shall apply to relevant matters pending at that time. If Public Law 94-566 or those provisions thereof relating to coverage of State and local employees should at any time be repealed by the U.S. Congress, then the provisions of this act relating to coverage of State and local employees shall be automatically repealed."

Only the introductory language and the subdivisions added or changed by the amendments are set out.

Cited in State ex rel. Employment Security Comm'n v. Paul's Young Men's Shop, Inc., 32 N.C. App. 23, 231 S.E.2d 157 (1977).

§ 96-9. Contributions. — (a) Payment. —

- (1) Except as provided in subsection (d) hereof, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Chapter, with respect to wages for employment (as defined in G.S. 96-8(6)). Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ. Contributions shall become due on and shall be paid on or

before the last day of the month following the close of the calendar quarter in which such wages are paid and such contributions shall be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided, further, that if the Commission shall be advised by its duly authorized officers or agents that the collection of any contribution under any provision of this Chapter will be jeopardized by delay, the Commission may, whether or not the time otherwise prescribed by law for making returns and paying such tax has expired, immediately assess such contributions (together with all interest and penalties, the assessment of which is provided for by law). Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Commission for the payment thereof. Upon failure or refusal to pay such contributions, penalties, and interest, it shall be lawful to make collection thereof as provided by G.S. 96-10 and subsections thereunder and such collection shall be lawful without regard to the due date of contributions herein prescribed, provided, further, that nothing in this paragraph shall be construed as permitting any refund of contributions heretofore paid under the law and regulations in effect at the time such contributions were paid.

- (2) In the payment of any contributions a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.
- (3) Benefits paid employees of this State shall be financed and administered in accordance with the provisions and conditions of G.S. 96-9(d) required for nonprofit organizations; except as provided by suitable regulations which may be adopted by the Commission. The Department of Administration shall make an election with respect to financing all such benefits.
- (4) Political subdivisions of this State may finance benefits paid to employees either by coming under the experience rating program provided in G.S. 96-9(b) or by coming into the program on a reimbursement basis in accordance with the provisions and conditions of G.S. 96-9(d). Any election made shall be binding upon the political subdivision so electing for a period of four years.
- (5) Prior to January 1, 1978, the term "wages" shall not include for the purposes of this section any remuneration in excess of four thousand two hundred dollars (\$4,200) paid to any individual in a single calendar year by an employer with respect to employment.

Prior to January 1, 1978, for purposes of this section, the term "wages" shall not include any remuneration paid to any employee in this State in excess of four thousand two hundred dollars (\$4,200) paid to an individual by a single employer if the employer of that individual made contributions in another state or states upon the wages paid to such individual during the applicable calendar year, because of work performed in another state or states.

Prior to January 1, 1978, any successor employer as defined in G.S. 96-8(5)b for the purposes of this section shall pay no contributions on that part of remuneration earned by any individual in the employ of the successor employer which, when added to the remuneration previously paid by the predecessor employer exceeded the sum of four thousand two hundred dollars (\$4,200) in a single calendar year, provided the individual was an employee of the predecessor and was taken over as an employee by the successor as a part of the organization acquired and, provided further, that the predecessor employer has paid

contributions on the wages paid to such individual while in his employ during the year of acquisition and the account of the predecessor is transferred to the successor in accordance with G.S. 96-9(c)(4)a.

Beginning January 1, 1978, and thereafter, the taxable wage base of any employee whose wages are subject to taxation, whether totally or partially, by the State of North Carolina under any provision of this Chapter shall be the federally required tax base.

(b) Rate of Contributions. —

(1) Except as provided in subsection (d) hereof, each employer shall pay contributions with respect to employment during any calendar year prior to January 1, 1955, as required by this Chapter prior to such January 1, 1955, and each employer shall pay contributions equal to two and seven-tenths percent (2.7%) of wages paid by him during the calendar year 1955 and each year thereafter with respect to employment occurring after December 31, 1954, which shall be deemed the standard rate of contributions payable by each employer except as provided herein.

(2) a. No employer's contribution rate shall be reduced below the standard rate for any calendar year unless and until his account has been chargeable with benefits throughout the twelve consecutive calendar-month period ending July 31 immediately preceding the computation date and his credit reserve ratio meets the requirements of that schedule used in the computation.

b. The Commission shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance and has been chargeable with benefits as set forth in G.S. 96-9(b)(2)a of this Chapter. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of such employer's account as of July 31 of each year by the total taxable payroll of such employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.

c. The Commission shall for each year compute a debit ratio for each employer whose account shows that the total of all his contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits is less than the total benefits charged to his account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of such employer's account as of July 31 of each year by the total taxable payroll of such employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.

(3) a. Repealed by Session Laws 1977, c. 727, s. 39, effective January 1, 1978.

b. Repealed by Session Laws 1977, c. 727, s. 39, effective January 1, 1978.

c. Repealed by Session Laws 1977, c. 727, s. 39, effective January 1, 1978.

- d. The applicable schedule of rates for the calendar year 1972 and thereafter shall be determined by the fund ratio resulting when the total amount available for benefits in the unemployment insurance fund, as of the computation date, August 1, is divided by the total amount of the taxable payroll of all subject employers for the 12-month period ending June 30 preceding such computation date. Schedule A,B,C,D,E,F,G,H, or I appearing on the line opposite such fund ratio in the table below shall be applicable in determining and assigning each eligible employer's contribution rate for the calendar year immediately following the computation date.

FUND RATIO SCHEDULES

When the Fund Ratio Is:		Applicable Schedule
As Much As	But Less Than	
	2.5%	A
2.5%	3.5%	B
3.5%	4.5%	C
4.5%	5.5%	D
5.5%	6.5%	E
6.5%	7.5%	F
7.5%	8.5%	G
8.5%	9.5%	H
9.5% and in excess thereof		I

Variations from the standard rate of contributions shall be determined and assigned with respect to the calendar year 1972 and thereafter, to employers whose accounts have a credit balance and who are eligible therefor according to each such employer's credit reserve ratio, and each such employer shall be assigned the contribution rate appearing in the applicable Schedule A,B,C,D,E,F,G,H, or I on the line opposite his credit reserve ratio as set forth in the Experience Rating Formula below:

EXPERIENCE RATING FORMULA

When The Credit Reserve Ratio Is:											
As Much As		But Less Than		Rate Schedules (%)							
		A	B	C	D	E	F	G	H	I	
	0.8%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5
0.8%	1.0	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3
1.0	1.2	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1
1.2	1.4	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9
1.4	1.6	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7	
1.6	1.8	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5	
1.8	2.0	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3	
2.0	2.2	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1	
2.2	2.4	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9	

EXPERIENCE RATING FORMULA

When The Credit Reserve Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
2.4	2.6	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7
2.6	2.8	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5
2.8	3.0	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4
3.0	3.2	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3
3.2	3.4	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2
3.4	3.6	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1
3.6	3.8	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1
3.8	4.0	0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1	0.1
4.0	4.2	0.7	0.5	0.4	0.3	0.2	0.1	0.1	0.1	0.1
4.2	4.4	0.5	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1
4.4	4.6	0.4	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1
4.6	4.8	0.3	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1
4.8	5.0	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
5.0 and in excess thereof		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1

New rates shall be assigned to eligible employers effective January 1, 1972, and each January 1 thereafter in accordance with the foregoing Fund Ratio Schedule and Experience Rating Formula.

The Experience Rating Formula table in force in any particular year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding.

- e. Each employer whose account as of any computation date occurring after August 1, 1964, shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

RATE SCHEDULE FOR OVERDRAWN ACCOUNTS BEGINNING WITH THE CALENDAR YEAR 1978

When The Debit Ratio Is:

As Much As	But Less Than	Assigned Rate
0.0%	0.3%	2.9%
0.3	0.6	3.1
0.6	0.9	3.3
0.9	1.2	3.5
1.2	1.5	3.7
1.5	1.8	3.9
1.8	2.1	4.1
2.1	2.4	4.3
2.4	2.7	4.5
2.7	3.0	4.7
3.0	3.3	4.9
3.3	3.6	5.1
3.6	3.9	5.3
3.9	4.2	5.5
4.2 and over		5.7

The Rate Schedule for Overdrawn Accounts Beginning with the Calendar year 1966 in force in any particular calendar year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding.

- f. The computation date for all contribution rates shall be August 1 of the calendar year preceding the calendar year with respect to which such rates are effective.
 - g. Any employer may at any time make a voluntary contribution, additional to the contributions required under this Chapter, to the fund to be credited to his account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as said term is used in G.S. 96-8(8). Any voluntary contributions so made by an employer within 30 days after the date of mailing by the Commission pursuant to G.S. 96-9(c)(3) herein, of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to his account as of the previous July 31. Provided, however, any voluntary contribution made as provided herein after July 31 of any year shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9(b)(3) until the following July 31. The Commission in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of such voluntary contribution by any employer.
 - h. If, within the calendar month in which the computation date occurs, the Commission finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the Commission finds incorrect or insufficient, the Commission shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of such notice, the Commission shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.
- (c) (1) Except as provided in subsection (d) hereof, the Commission shall maintain a separate account for each employer and shall credit his account with all voluntary contributions made by him and all other contributions which he has paid or is paid on his own behalf, provided that any voluntary contribution made by an employer under the provisions of G.S. 96-9(b)(3)c(d), and credited to his account, shall be credited to such account in an amount equal to eighty percent (80%) of the amount of such voluntary contribution. The Commission shall credit the account of each employer in an amount equal to eighty percent (80%) of all contributions which he has paid or is paid on his own behalf with respect to employment occurring subsequent to June 30, 1965. On the computation date, beginning first with August 1, 1948, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to this State's account in the unemployment trust fund in the treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the

same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this Act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Charging of benefit payments. —

- a. Benefits paid shall be charged against the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period, except as hereinafter provided in paragraphs b, c, and d of this subdivision, G.S. 96-9(d)(2)c, and 96-12(e)G. Benefits paid shall be charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.
- b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the voluntary leaving of work by the claimant without good cause attributable to the employer, or (ii) the discharge of claimant for misconduct in connection with his work, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished part-time work to an individual who, because of the loss of employment with one or more other employers becomes eligible for partial benefits while still being furnished part-time work by such employer on substantially the same basis and substantially the same amount as had been made available to such work during his base period whether the employments were simultaneous or successive.

- c. Any benefits paid to any claimant who is attending a vocational school or training program as provided in G.S. 96-13(3) shall not be charged to the account of the base period employer(s).
- d. Any benefits paid to any claimant under the following conditions shall not be charged to the account of the base period employer(s):
 1. The benefits are paid for unemployment due directly to a major natural disaster, and
 2. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 USCA 4401, et seq., and
 3. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act, if they had not received unemployment insurance benefits with respect to that unemployment.

- e. 1. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be charged to the experience rating account of any employer.
2. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service.
- (3) As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each employer's account and shall furnish him with a statement of all charges and credits thereto. At the same time the Commission shall notify each employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The Commission may redetermine on its own motion within the same period of time.
- (4) Transfer of account. —
 - a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision.
 - b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, his rate of contribution for the period from such date to the end of the then current contribution year shall be the same as his rate in effect on the date of such acquisition. If the successor was not an employer prior to the date of the acquisition of the business he shall be assigned a standard rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which he acquired the business of the

predecessor; however, if such successor makes application for the transfer of the account within 60 days after notification by the Commission of his right to do so and the account is transferred, he shall be assigned for the remainder of such year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, provided there was only one predecessor or if more than one and the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard rate of contributions of two and seven-tenths percent (2.7%) and shall continue to pay at such rate until he qualifies for a reduction, reacquires the account he transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

(5) In the event any employer subject to this Chapter ceases to be such an employer, his account shall be closed and the same shall not be used in any future computation of such employer's rate nor shall any period prior to the effective date of the termination of such employer during which benefits were chargeable be considered in the application of G.S. 96-9(b)(2) of this Chapter.

(d) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this paragraph. For the purposes of this paragraph, a nonprofit organization is an organization (or group of organizations) described in section 501 (c) (3) of the United States Internal Revenue Code of 1954 which is exempt from income tax under section 501 (a) of said Code.

(1) a. Any nonprofit organization which becomes subject to this Chapter on or after January 1, 1972, shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this paragraph to pay the Commission for the Unemployment Insurance Fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin within a benefit year established during the effective period of such election.

b. Any nonprofit organization which is or becomes subject to this Chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than four calendar years beginning with the date on which subjectivity begins by filing a written notice of its election with the Commission not later than 30 days immediately following the date of written notification of the determination of such subjectivity. Provided if notification is not by registered mail, the election may be made on or after January 1, 1972, within six months following the date of the written notification of the determination of such subjectivity.

If such election is not made as set forth herein, no election can be made until after four calendar years have elapsed under the contributions method of payment.

- c. Any nonprofit organization which makes an election in accordance with subparagraph b of this paragraph will continue after such four calendar years to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election not later than 30 days prior to the next January 1, effective on such January 1.
- d. Any nonprofit organization which has been paying contributions under this Chapter for a period of at least four consecutive calendar years subsequent to January 1, 1972, may elect to change to a reimbursement basis by filing with the Commission not later than 30 days prior to the next January 1 a written notice of election to become liable for payments in lieu of contributions, effective on such January 1. Such election shall not be terminable for a period of four calendar years. In the event of such an election, the account of such employer shall be closed and shall not be used in any future computation of such employer's contribution rate in any manner whatsoever.
- e. The Commission, in accordance with such regulations as it may adopt, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this subparagraph and shall be processed as provided herein.

- a. Quarterly contributions and wage reports and advance payments shall be submitted to the Commission quarterly under the same conditions and requirements of G.S. 96-9 and 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on such reports; provided that such advance payments shall become effective only with respect to the first four thousand two hundred dollars (\$4,200) in wages paid in a calendar year until January 1, 1978. On and after that date advance payments shall be effective with respect to the federally required wage base. Collection of such advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

Beginning January 1, 1978, any employer making quarterly reports of employment to the Commission and if such employer is a newly electing reimbursement employer he shall pay contributions of one percent (1%) of taxable wages entered on such reports.

Any employer paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports.

- b. The Commission shall establish a separate account for each such employer and such account shall be charged, credited, and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full and voluntary contributions are not applicable.
- c. Benefits paid shall be charged to the employer's account in accordance with G.S. 96-9(c)(2)a; provided that the noncharging of benefits set forth in G.S. 96-9(c)(2)b shall not apply; provided

further, irrespective of any other provisions of this Chapter, all benefits paid shall be charged to the employer's account as provided herein, and no benefits paid shall be noncharged, except an amount equal to fifty percent (50%) of extended benefits paid. Any such benefits paid and later determined to be overpayments shall be credited to the employer's account only if recovered.

- d. As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each such employer's account and shall furnish him with a statement of all charges and credits thereto.

As of the second computation date (August 1) following the effective date of liability and as of each computation date thereafter, any credit balance remaining in the employer's account (after all applicable postings) in excess of whichever is the greater (a) benefits charged to such account during the 12 months ending on such computation date, or (b) one percent (1%) of taxable wages for the 12 months ending on June 30 preceding such computation date shall be refunded. Any such refund shall be made prior to February 1 following such computation date.

Should the balance in such account not equal that requiring a refund, the employer shall upon notice and demand for payment mailed to his last known address pay into his account an amount that will bring such balance to the minimum required for a refund. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment. Any such amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Upon a change in election as to the method of payment from reimbursement to contributions, or upon termination of coverage and after all applicable benefits paid based on wages paid prior to such change in election or termination of coverage have been charged, any credit balance in such account shall be refunded to the employer.

Should there be a debit balance in such account, the employer shall, upon notice and demand for payment, mailed to his last-known address, pay into his account an amount equal to such debit balance. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment.

Any such amount unpaid on the date due shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Beginning January 1, 1978, each employer paying by reimbursement shall have his account computed on computation date (August 1) and if there is a deficit shall be billed for an amount necessary to bring his account to one percent (1%) of his taxable payroll. Any amount of his account in excess of that required to equal one percent (1%) of his payroll shall be refunded. Amounts due from any employer to bring his account to a one percent (1%) balance shall be billed as soon as practical and payment will be due within 25 days from the date of mailing of the statement of amount due.

- e. The Commission may make necessary rules and regulations with respect to coverage of a group of nonprofit organizations and with respect to the reimbursement of benefits payments by such group of nonprofit organizations.

- (3) a. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be charged to a nonprofit organization which

makes payments to the State Unemployment Insurance Fund in lieu of contributions.

- b. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service.

(e) In order that the Commission shall be kept informed at all times on the circumstances and conditions of unemployment within the State and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the Commission may deem necessary shall be made.

(f) (1) On and after January 1, 1978, all benefits charged to a State or local governmental employing unit shall be paid to the Commission within 25 days from the date a list of benefit charges is mailed to the State or local governmental employing agency and the appropriate account(s) shall be credited with such payment(s).

(2) In lieu of paying for benefits by reimbursement as provided in subdivision (1) hereof, any State or local governmental employing unit may elect pursuant to rules and regulations established by the Commission to pay contributions on an experience rating basis as provided in G.S. 96-9(a), (b), and (c).

(3) State or local governmental employing units paying for benefits as provided in subdivision (1) herein may establish pool accounts; provided, that such pool accounts are established and maintained according to the rules and regulations of the Commission.

(4) Any governmental entity paying by reimbursement shall not have any benefits paid against its account noncharged or forgiven. (Ex. Sess. 1936, c. 1, s. 7; 1939, c. 27, s. 6; 1941, c. 108, ss. 6, 8; c. 320; 1943, c. 377, ss. 11-14; 1945, c. 522, ss. 11-16; 1947, c. 326, ss. 13-15, 17; c. 881, s. 3; 1949, c. 424, ss. 9-13; c. 969; 1951, c. 322, s. 2; c. 332, ss. 4-7; 1953, c. 401, ss. 12-14; 1955, c. 385, ss. 5, 6; 1957, c. 1059, ss. 5-11; 1959, c. 362, ss. 7, 8; 1965, c. 795, ss. 6-10; 1969, c. 575, ss. 7, 8; 1971, c. 673, ss. 14-20; 1973, c. 172, ss. 2, 3; c. 740, s. 1; 1977, c. 727, ss. 37-49.)

Cross Reference. — For provisions authorizing the State Treasurer to establish a pool account in cooperation with any one or more units of local government for the purpose of reimbursing the Employment Security Commission for unemployment benefits paid by the Commission and chargeable to each local unit of government participating in the pool account, see § 147-86.1.

Editor's Note. —

Session Laws 1977, c. 727, ss. 37 through 40 and 42 through 49, effective Jan. 1, 1978, made changes in subdivisions (1), (4) and (5) of subsection (a), subdivision (3) of subsection (b), subdivisions (1), (2) and (4) of subsection (c), and subdivision (2) of subsection (d), added subdivision (3) of subsection (d), and added subsection (f). Section 41 of c. 727, in paragraph a of subdivision (2) of subsection (c), deleted the

former first sentence, which read "Benefits paid shall be charged against the account of each base period employer on wages paid to an eligible individual in any quarter prior to April 1, 1959, in the base period as provided by this Chapter prior to April 1, 1959," deleted "subsequent to March 31, 1959" following "in any calendar quarter" in the present first sentence, and deleted "on and after August 1, 1952" following "Benefits paid," "whose maximum total benefits have been exhausted or" following "benefits paid to claimants," and "during each 12 months' period ending on the July 31, preceding the computation date" following "benefit years have expired" in the present second sentence. Section 41 of c. 727 became effective on ratification, June 24, 1977.

Session Laws 1977, c. 727, s. 58, provides: "If U.S. Public Law 94-566 or the federal acts it

amends should be adjudged unconstitutional or invalid in its or their application or stayed pendente lite as to State or local employees by a court of competent jurisdiction, then the coverage of those employees under this act is automatically stayed or repealed to the extent of the adjudged inapplicability. The repeal shall be effective from the date of final disposition upon appeal or from the date of expiration of the right of appeal and shall apply to relevant matters pending at that time. If Public Law 94-566 or those provisions thereof relating to coverage of State and local employees should at any time be repealed by the U.S. Congress, then the provisions of this act relating to coverage of State and local employees shall be automatically repealed."

Transfer of Reserve Credited to Particular Employer, etc. —

There is nothing in the statutes to prohibit the Employment Security Commission from going

back and making a proper allocation of contributions erroneously paid. Moreover, there is nothing in the statutes which prevents the Commission, from going back and setting up accounts retroactively in the names of each of three corporations, allocating to each account the contributions heretofore paid (erroneously through the medium of another business) on account of wages of employees of each particular corporation, and making charges against each account of all amounts which would properly have been chargeable thereto had the account been in existence from the time when each corporation became subject, as a separate employing unit, to the provisions of the Employment Security Law. State ex rel. Employment Security Comm'n v. Paul's Young Men's Shop, Inc., 32 N.C. App. 23, 231 S.E.2d 157 (1977), decided prior to the 1977 amendment.

§ 96-10. Collection of contributions. — (a) Interest on Past-Due Contributions. — Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall bear interest at the rate of one-half of one percent (0.5%) per month from and after such date until payment plus accrued interest is received by the Commission. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added, but said penalty shall in no event be less than five dollars (\$5.00). Penalties and interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this Commission, which contributions were legally payable to this State, such contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if paid by the due date of such other state or the United States.

(c) Priorities under Legal Dissolution or Distributions. — In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars (\$250.00) to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act (U.S.C., Title 11, section 104(a)), as amended.

A receiver of any covered employer placed into an operating receivership pursuant to an order of any court of this State shall pay to the Commission any contributions, penalties or interest then due out of moneys or assets on hand or coming into his possession before any such moneys or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership.

(g) Any employer refusing to make reports required under this Chapter, after 10 days' written notice sent by the Commission to the employer's last known address by registered mail, may be enjoined from operating in violation of the provisions of this Chapter upon the complaint of the Commission, in any court

of competent jurisdiction, until such report shall have been made. When an execution has been returned to the Commission unsatisfied, and the employer, after 10 days' written notice sent by the Commission to the employer's last known address by registered mail, refuses to pay contributions covered by the execution, such employer may be enjoined from operating in violation of the provisions of this Chapter upon motion of the Commission, in any court of competent jurisdiction, until such contributions have been paid.

There shall be added to the amount required to be shown as tax in the reports a penalty of five percent (5%) of the amount of such tax if the failure is not for more than one month with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) of the aggregate or five dollars (\$5.00), whichever is greater.

(j) The Commission shall have the power to reduce or waive any penalty provided in G.S. 96-10(a) or 96-10(g). The reason for any such reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies. (Ex. Sess. 1936, c. 1, s. 14; 1939, c. 27, ss. 9, 10; 1941, c. 108, ss. 14-16; 1943, c. 377, ss. 24-28; 1945, c. 221, s. 1; c. 288, s. 1; c. 522, ss. 17-20; 1947, c. 326, ss. 18-20; c. 598, s. 9; 1949, c. 424, ss. 14-16; 1951, c. 332, ss. 8, 20; 1953, c. 401, s. 15; 1959, c. 362, s. 9; 1965, c. 795, s. 11; 1971, c. 673, s. 21; 1973, c. 108, s. 43; c. 172, s. 4; 1977, c. 727, s. 50.)

Editor's Note. —

The 1977 amendment, effective Jan. 1, 1978, added the present second sentence of subsection (a), added "Penalties and" to the beginning of the present third sentence of subsection (a),

added the second paragraphs of subsections (c) and (g), and added subsection (j).

As the rest of the section was not changed by the amendment, only subsections (a), (c), (g) and (j) are set out.

§ 96-11. Period, election, and termination of employer's coverage.

- (c) (1) An employing unit, not otherwise subject to this Chapter, which files with the Commission its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, it has filed with the Commission a written notice to that effect, provided such employing unit may be terminated by the Commission as provided under the provisions of subdivision (3) [(4)] of this subsection.
- (2) Any employing unit for which services that do not constitute employment as defined in this Chapter are performed may file with the Commission a written election that all such services performed by individuals in its employ, in one or more distinct establishments or places of business, shall be deemed to constitute employment for all the purposes of this Chapter for not less than two calendar years. Upon the written approval of such election by the Commission such services shall be deemed to constitute employment subject to this Chapter from and after the date stated in such approval. Such services shall cease to be deemed employment, subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, such employing unit has filed with the Commission a written notice to that effect, provided such employing unit may be terminated by the Commission as provided under the provisions of subdivision (3) [(4)] of this subsection.

- (3) a. On and after January 1, 1972, through December 31, 1977, any political subdivision of this State may elect, for a period of not less than two calendar years, to cover under this Chapter service performed by employees in all of the hospitals and institutions of higher education, as defined in G.S. 96-8(5)l, operated by such political subdivisions. Any election is to be made by filing with the Commission a notice of such election at least 30 days prior to January 1, the effective date of such election. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in G.S. 96-9(d).
- b. The provisions in G.S. 96-13(4) with respect to benefit rights based on service for State and nonprofit institutions of higher education shall be applicable also to service covered by an election under this section.
- c. The amounts required to be paid in lieu of contributions by any political subdivision under this section shall be as provided in G.S. 96-9(d), with respect to similar payments by nonprofit organization.
- d. An election under this section may be terminated as of January 1 of any calendar year subsequent to such two calendar years only if 30 days prior to such January 1, such employer has filed with the Commission a written notice to that effect.
- (4) On and after July 1, 1965, the Commission on its own motion and in its discretion, upon 30 days' written notice mailed to the last known address of such employer, may terminate coverage of any employer which has become subject to this Chapter solely by electing coverage under the provisions of this subsection.
- (1977, c. 727, s. 51.)

Editor's Note. —

The 1977 amendment, effective Jan. 1, 1978, inserted "through December 31, 1977" near the beginning of paragraph a of subdivision (3) of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 96-12. Benefits.

- (b) (1) a. Repealed by Session Laws 1977, c. 727, s. 52, effective January 1, 1978.
- b. Each eligible individual whose benefit year begins on or after the first day of October, 1974, who is totally unemployed as defined by G.S. 96-8(10)a, and who files a valid claim, shall be paid benefits with respect to such week or weeks at a rate per week equal to the amount obtained by dividing such individual's high-quarter wages paid during his base period by 26, rounded to the nearest dollar, but shall not be less than fifteen dollars (\$15.00).
- c. Each eligible individual whose benefit year begins on or after the first day of October, 1974, who is "partially unemployed" or "part totally unemployed" as defined in G.S. 96-8(10)b and c, respectively, and who files a valid claim, shall be paid benefits with respect to such week or weeks in an amount figured to the nearest multiple of one dollar (\$1.00) which is equal to the difference between his weekly benefit amount and that part of the remuneration payable to him for such week which is in excess of one half of his weekly benefit amount. Provided, for all benefit years beginning after December 31, 1977, the allowable excess shall be ten percent (10%) of the average weekly wage in the high quarter of his base period.

- (2) Notwithstanding any of the foregoing provisions of this section, beginning August 1, 1969, and at each August 1 thereafter, a maximum weekly benefit amount shall be computed. It is derived by multiplying the average weekly insured wage obtained in accordance with G.S. 96-8(22) by fifty per centum (50%), rounded to the nearest multiple of two dollars (\$2.00). After determining the maximum weekly benefit amount available the Commission shall extend the benefit schedule, if required, by an appropriate modification of the pattern of base period wages required in Column I, the assigned weekly benefit in Column II and nonhigher-quarter earnings required in Column III. The new maximum rate determined in the aforesaid manner shall be effective only to each eligible individual whose benefit year begins on or after such August 1 of the year the computation is made. Beginning October 1, 1974, and each August 1 thereafter, a maximum weekly benefit amount available to an eligible individual whose benefit year begins on October 1, 1974, or thereafter, shall be determined by multiplying the average weekly insured wage, obtained in accordance with G.S. 96-8(22), by two thirds rounded to the nearest dollar. The maximum rate applicable to each claimant shall be that rate in effect during the time the claimant's benefit year is established.
- (3) Qualifying Wages for Exhaustees. — An individual who has exhausted his maximum benefit entitlement in his last previous benefit year who files a claim for benefits shall not be entitled to benefits unless he has been paid qualifying wages required in G.S. 96-12(b)(1), and since the beginning date of his last established previous benefit year and before the date upon which he files his new benefit claim has been paid wages equal to at least 10 times the weekly benefit amount of the new benefit year claim. Such wages must have been earned with an employer subject to the provisions of this Chapter or some other state employment security law or in federal service as defined in Chapter 85, Title 5, United States Code.
- (4) Qualifying Wages for Second Benefit Year. — Any individual whose prior benefit year has expired and who files a claim for benefits on and after January 1, 1972, shall not be entitled to benefits unless he has been paid qualifying wages required by G.S. 96-12(b)(1), and since the beginning date of his last established previous benefit year and before the date upon which he files his new benefit claim has been paid wages equal to at least 10 times the weekly benefit amount of the new benefit year claim. Such wages must have been earned with an employer subject to the provisions of this Chapter or some other state employment security law or in federal service as defined in Chapter 85, Title 5, United States Code.
- (e) Extended Benefits. — Effective January 1, 1972, extended benefits shall be paid under this Chapter as herein specified:
- A. Definitions. — As used in this subsection, unless the context clearly requires otherwise —
- (1) "Extended benefit period" means a period which
- (a) begins with the third week after whichever of the following weeks occurs first:
- (I) a week for which there is a national "on" indicator, or
- (II) a week for which there is a State "on" indicator; and
- (b) ends with either of the following weeks, whichever occurs later:
- (I) the third week after the first week for which there is both a national "off" indicator and a State "off" indicator; or
- (II) the thirteenth consecutive week of such period.

Provided, that no extended benefit period may begin by reason of a State "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

- (2) Beginning January 1, 1975, through December 31, 1976, there is a "national 'on' indicator" for a week if the United States Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equalled or exceeded four percent (4%). On and after January 1, 1977, there is a national "on" indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states equalled or exceeded four and five-tenths per centum (4.5%). The rate of insured unemployment, for purposes of this paragraph, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.
- (3) Beginning January 1, 1975, through December 31, 1976, there is a "national 'off' indicator" for a week if the United States Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four percent (4%). On and after January 1, 1977, there is a national "off" indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths per centum (4.5%). The rate of insured unemployment, for purposes of this paragraph, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.
- (4) There is a "State 'on' indicator" for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter —
 - a. equalled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and equalled or exceeded four percent (4%), or
 - b. equalled or exceeded five percent (5%).G.S. 96-12(e)A(4)a is hereby inoperative for the period between January 1, 1975 through December 31, 1976.
- (5) There is a "State 'off' indicator" for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter —
 - a. was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, or was less than four percent (4%), or
 - b. was less than five percent (5%).

G.S. 96-12(e)A(5)a is hereby inoperative for the period between January 1, 1975 through December 31, 1976.

- (6) "Rate of insured unemployment," for the purposes of subparagraphs (4) and (5) of this subsection, means the percentage derived by dividing
- a. the average weekly number of individuals filing claims in this State for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the Commission on the basis of its reports to the United States Secretary of Labor, by
 - b. the average monthly employment covered under this Chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.
- (7) "Regular benefits" means benefits payable to an individual under this Chapter or any other State law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) other than extended benefits.
- (8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.
- (9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.
- (10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:
- a. has received, prior to such week, all of the regular benefits that were available to him under this Chapter or any other State law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such week;
Provided, that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although (1) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (2) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions in G.S. 96-16; or
 - b. his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and
 - c. (1) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and
(2) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

- (11) "State law" means the unemployment insurance law of any state approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.
- B. Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for Payment of, Extended Benefits. — Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Commission, the provisions of this Chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.
- C. Eligibility Requirements for Extended Benefits. — An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that with respect to such week:
1. He is an "exhaustee" as defined in subsection A(10).
 2. He has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.
- D. Weekly Extended Benefit Amount. — The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts.
- E. Total Extended Benefit Amount. — The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:
1. Fifty percent (50%) of the total amount of regular benefits which were payable to him under this Chapter in his applicable benefit year; or
 2. Thirteen times his weekly benefit amount which was payable to him under this Chapter for a week of total unemployment in the applicable benefit year.
- F. Beginning and Termination of Extended Benefit Period. —
1. Whenever an extended benefit period is to become effective in this State (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this State as a result of state and national "off" indicators, the Commission shall make an appropriate public announcement.
 2. Computations required by the provisions of subsection A(6) shall be made by the Commission, in accordance with regulations prescribed by the United States Secretary of Labor.
- G. Prior to January 1, 1978, any extended benefits paid to any claimant under G.S. 96-12(e) shall not be charged to the account of the base period employer(s) who pay contributions as required by this Chapter. However, fifty percent (50%) of any such benefits paid shall be allocated as provided in G.S. 96-9(c)(2)a (except that G.S. 96-9(c)(2)b shall not apply), and the applicable amount shall be charged to the account of the appropriate employer paying on a reimbursement basis in lieu of contributions.

On and after January 1, 1978, the federal portion of any extended benefit shall not be charged to the account of any base period employer who pays contributions as required by this Chapter. All State portions of the extended benefits paid shall be charged to the account of governmental entities or other employers not liable for FUTA taxes who are the base period employers.

H. Notwithstanding the provisions of G.S. 96-9(d)(1)a, 96-9(d)(2)c, 96-12(e)G, or any other provision of this Chapter, any extended benefits paid which are one hundred percent (100%) federally financed shall not be charged in any percentage to any employer's account.

(f) Any amount payable under any provision of this Chapter when applicable is subject to the retirement reduction required by G.S. 96-14(9). (Ex. Sess. 1936, c. 1, s. 3; 1937, c. 448, s. 1; 1939, c. 27, ss. 1-3, 14; c. 141; 1941, c. 108, s. 1; c. 276; 1943, c. 377, ss. 1-4; 1945, c. 522, ss. 24-26; 1947, c. 326, s. 21; 1949, c. 424, ss. 19-21; 1951, c. 332, ss. 10-12; 1953, c. 401, ss. 17, 18; 1957, c. 1059, ss. 12, 13; c. 1339; 1959, c. 362, ss. 12-15; 1961, c. 454, ss. 17, 18; 1965, c. 795, ss. 15, 16; 1969, c. 575, s. 9; 1971, c. 673, ss. 25, 26; 1973, c. 1138, ss. 3-7; 1975, c. 2, ss. 1-5; 1977, c. 727, s. 52.)

Editor's Note. —

The 1975 amendment, in paragraphs (2) and (3) of subdivision A of subsection (e), added "Beginning January 1, 1975, through December 31, 1976" at the beginning of the first sentence, substituted "four percent (4%)" for "four and one-half percent (4.5%)" at the end of the first sentence. The amendment also added the last sentences of paragraphs (4) and (5) of subdivision A of subsection (e) and added subdivision H to subsection (e).

Subsections (a) and (c) of Session Laws 1977, c. 727, s. 52, effective Jan. 1, 1978, deleted paragraph a, of subdivision (b)(1), which related to the benefits payable to eligible individuals whose benefit year began on and after the first day of August, 1969, and added the second sentence of paragraph c of that subdivision. In subdivision (e)A, subsections (d) and (e) of s. 52, effective Jan. 1, 1978, rewrote the second sentences and added the third sentences of

paragraphs (2) and (3). Subsection (f) of s. 52, in paragraph A (4) of subsection (e), deleted the subparagraph b designation preceding "equaled or exceeded four percent (4%)," added "or" to the end of present subparagraph a, and added present subparagraph b. Subsection (g) of s. 52, in paragraph A (5) of subsection (e), deleted the subparagraph b designation preceding "was less than four percent (4%)," added "or" to the end of present subparagraph a, and added present subparagraph b. Subsections (f) and (g) of s. 52 became effective on ratification, June 24, 1977. Subsections (h) and (i) of s. 52, effective Jan. 1, 1978, substituted "Prior to January 1, 1978" for "Irrespective of any other provisions of this Chapter" at the beginning of the first paragraph of subdivision (e) G, added the second paragraph of that subdivision, and added subsection (f).

As the rest of the section was not changed by the amendments, only subsections (b), (e) and (f) are set out.

§ 96-13. Benefit eligibility conditions. — (a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that —

- (1) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe;
- (2) He has made a claim for benefits in accordance with the provisions of G.S. 96-15 (a);
- (3) He is able to work, and is available for work: Provided that no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working

days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. Provided further, any employee of a secondary school system or subdivision of a secondary school system now covered for unemployment insurance purposes by federal law, State law, or contract shall be considered available for work during any week such individual is on vacation between successive terms, quarters, academic years, or similar periods between two regular terms, whether or not successive, only if the individual does not have a contract or contracts, written, oral, or implied, to perform services in any capacity for a secondary school system or subdivision of a secondary school system for both such academic years or both such terms. For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. (ii) An unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance. The Commission may approve such training course for an individual only if:

- a. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;
- b. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and
- c. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully.

(b) (1) The payment of benefits to any individual based on services for nonprofit organizations, hospitals, or State hospitals and State institutions of higher education and other institutions of higher education subject to this Chapter shall be in the same manner and under the same conditions of the laws of this Chapter as applied to individuals whose benefit rights are based on other services subject to this Chapter. Except that with respect to services in instructional, research, or principal administrative capacity in an institution of higher education which meets the requirements of G.S. 96-8(5)1, benefits shall not be payable based on such services for any week commencing during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(2) The payment of benefits to any individual based on services for secondary schools, or subdivisions of said secondary schools, subject to this Chapter, or administered under the provisions of this Chapter, shall

be in the same manner and under the same conditions of the laws of the Chapter as apply to individuals whose benefit rights are based on other services subject to this Chapter. Except that with respect to services in a secondary school, or subdivision thereof, benefits shall be payable based on such services for any week commencing during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, only if the individual does not have a contract or contracts, written, oral, or implied, to perform services in any such capacity for any secondary school for both such academic years or both such terms.

(c) From January 29, 1975, through February 15, 1977, no week of unemployment for waiting-period credit shall be required of any claimant. Beginning February 16, 1977, an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he has been totally, partially, or part-totally unemployed for a waiting period of one week with respect to each benefit year. No week shall be counted as a week of unemployment for waiting-period credit under this provision unless the claimant except for the provisions of this subdivision was otherwise eligible for benefits.

(d) Benefit entitlement of governmental entities that become subject to Employment Security Commission law effective January 1, 1978, will be administered in the same manner and under the same conditions of the laws of this Chapter as are applicable to individuals whose benefit rights are based on other service subject to this Chapter.

(e) Benefits shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the latter of such seasons (or similar periods).

(f) Benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203 (a)(7) or section 212 (d)(5) of the Immigration and Nationality Act). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence. (Ex. Sess. 1936, c. 1, s. 4; 1939, c. 27, ss. 4, 5; c. 141; 1941, c. 108, s. 2; 1943, c. 377, s. 5; 1945, c. 522, ss. 27-28; 1947, c. 326, s. 22; 1949, c. 424, s. 22; 1951, c. 332, s. 13; 1961, c. 454, s. 19; 1965, c. 795, ss. 17, 18; 1969, c. 575, ss. 10, 11; 1971, c. 673, ss. 27, 28; 1973, c. 172, s. 6; 1975, c. 2, s. 6; c. 8, ss. 1, 2; c. 226, ss. 1, 2; 1977, c. 727, s. 53.)

Editor's Note. —

The first 1975 amendment, in former subdivision (5) (now subsection (e)), added the first sentence and the language preceding "he has been" in the second sentence and deleted "either" preceding "totally" in the second sentence.

The second 1975 amendment, in subdivision (3) of present subsection (a), added "Except."

and exception clause (i) following the present sixth sentence, and designated the former proviso to the present sixth sentence as exception clause (ii), deleting "Provided further, however, effective July 1, 1969," at the beginning of that clause.

The third 1975 amendment added the present fifth sentence in subdivision (3) of present subsection (a) and designated the former

provisions of subdivision (4) (now subsection (b)) as paragraph a (now subdivision (1)) and added paragraph b (now subdivision (2)).

The 1977 amendment, effective Jan. 1, 1978, designated the former section through subdivision (3) as subsection (a) and the provisions of former subdivisions (4) and (5) as subsections (b) and (c), deleted "that effective January 1, 1949" following "Provided further, however" in the first sentence of subdivision (3) of subsection (a), redesignated paragraphs a and b of former subdivision (4) as subdivisions (1) and (2) of present subsection (b), and added subsections (d), (e) and (f).

The paragraphs in the following annotation treating the case of *In re Thomas*, 13 N.C. App. 513, 186 S.E.2d 623 (1972), should be substituted for the four paragraphs dealing with that case in the replacement volume.

"Able to Work". —

In accord with 2nd paragraph in original. See *In re Beatty*, 22 N.C. App. 563, 207 S.E.2d 321, *aff'd*, 286 N.C. 226, 210 S.E.2d 193 (1974).

The terms "able to work," "available for work" and "suitable employment" are not precise terms capable of application with mathematical precision. In *re Thomas*, 13 N.C. App. 513, 186 S.E.2d 623, *rev'd* on other grounds, 281 N.C. 598, 189 S.E.2d 245 (1972); *In re Beatty*, 22 N.C. App. 563, 207 S.E.2d 321 (1974).

The phrase "available for work" is not susceptible of precise definition, and whether a person is available for work differs according to the facts of each individual case. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Large measure of administrative discretion must be granted to the Employment Security Commission in the application to the terms "able to work," "available for work" and "suitable employment" to specific cases. In *re Beatty*, 22 N.C. App. 563, 207 S.E.2d 321, *aff'd*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Restrictions Claimant Places on His Employment. — It is essentially a matter of degree to ascertain to what extent a claimant can impose restrictions and on what these restrictions must be based. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

The problem is whether or not the restrictions which the claimant places on his employment serve to limit the work which a claimant can accept to such a degree that he is no longer genuinely attached to the labor force. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Labor Market to Be Described in Terms of Individual. — Since, under unemployment compensation laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Significance of Claimant's Age in Determining Labor Market. — For a case discussing the significance of the fact that employers in a locality do not customarily employ persons of claimant's advanced age, see *In re Thomas*, 13 N.C. App. 513, 186 S.E.2d 623, *rev'd*, 281 N.C. 598, 189 S.E.2d 245 (1972).

Rights Not Determined by Unions or Employers. — The rights of claimants to unemployment compensation must be determined by the statutory provisions of Chapter 96 rather than by rules promulgated by a union, other employee groups, and employer, employer groups, or anyone else. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Claimants, by their adherence to the terms of the guaranteed annual income provisions of their collective bargaining agreement, have placed themselves in a position which, for all practical purposes, eliminated their availability for work in contravention of the requirements of subdivision (3). In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Availability requirement is said to be satisfied when an individual is willing, able and ready to accept suitable work which he does not have good cause to refuse, that is, when he is generally attached to the labor market. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

Quantum of Proof of Availability for Work. — The Commission erred in requiring a 70-year-old claimant to show by clear, cogent and convincing evidence that she had reentered the labor force after having voluntarily retired from her job as a laundry worker. Under former § 143-318(1), the claimant had the burden to show that she was "available for work" only by the greater weight of the evidence. In *re Thomas*, 281 N.C. 598, 189 S.E.2d 245 (1972).

Where the Commission's findings of fact are amply supported by the evidence in the record, the Supreme Court is bound by the Commission's findings of fact. In *re Beatty*, 286 N.C. 226, 210 S.E.2d 193 (1974).

§ 96-14. Disqualification for benefits. — An individual shall be disqualified for benefits:

- (1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work voluntarily without good cause attributable to the employer.

- (2) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he was discharged for misconduct connected with his work.
- (3) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the Commission; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the Commission. Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
 - b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
 - c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.
- (4) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that:
 - a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the Commission;
 - b. Such individual has discontinued his training course without good cause; or
 - c. If the individual is separated from his training course or vocational school due to misconduct.
 - (9) The amount of compensation payable to an individual for any week which begins after July 2, 1977, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount rounded to the nearest dollar equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week.
 - (10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (3) or (4) above may have that permanent disqualification removed if he meets the following three conditions:

- a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;
- b. Subsequently becomes unemployed through no fault of his own; and
- c. Meets the availability requirements of the law.

Provided for good cause shown the Commission in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount. (Ex. Sess. 1936, c. 1, s. 5; 1937, c. 448, ss. 2, 3; 1939, c. 52, s. 1; 1941, c. 108, ss. 3, 4; 1943, c. 377, ss. 7, 8; 1945, c. 522, s. 29; 1947, c. 598, s. 10; c. 881, ss. 1, 2; 1949, c. 424, ss. 23-25; 1951, c. 332, s. 14; 1955, c. 385, ss. 7, 8; 1961, c. 454, s. 20; 1965, c. 795, s. 19; 1969, c. 575, s. 12; 1971, c. 673, s. 29; 1977, c. 26.)

Editor's Note. —

The 1977 amendment, effective July 3, 1977, substituted "For the duration of his unemployment" for "For not less than four, nor more than twelve consecutive weeks of unemployment, which occur within a benefit year," at the beginning of subdivisions (1) and (3), for "For not less than five, nor more than twelve consecutive weeks of unemployment, which occur within a benefit year" at the beginning of subdivision (2), and for "For not less than four nor more than twelve consecutive weeks of unemployment which occur within a benefit year" at the beginning of subdivision (4). The amendment also deleted, in subdivisions (1), (2), (3) and (4), provisions as to reduction in the maximum amount of benefits for persons disqualified under those subdivisions. In subdivision (4), the amendment also deleted the former last paragraph, which provided for carrying over the periods of disqualification in

subdivisions (1), (2), (3), and (4) to the next benefit year and for canceling the disqualification upon the disqualified person's returning to employment or training. The amendment also added subdivisions (9) and (10).

As the rest of the section was not changed, only the introductory language and the subdivisions added or changed by the amendment are set out.

This section prevails over provisions of § 96-2. —

This section, which sets out the specific grounds for disqualification of benefits, will prevail over the general policy provisions of § 96-2. In re Usery, 31 N.C. App. 703, 230 S.E.2d 585 (1976).

A "labor dispute" as used in subsection (5) includes work stoppage caused by management lockouts. In re Usery, 31 N.C. App. 703, 230 S.E.2d 585 (1976).

§ 96-15. Claims for benefits.

- (b) (1) Initial Determination. — A representative designated by the Commission shall promptly examine the claim and shall determine whether or not the claim is valid, and if valid, the week with respect to when benefits shall commence, the weekly benefit amount payable, and the potential maximum duration thereof. The claimant shall be furnished a copy of such initial or monetary determination showing the amount of wages paid him by each employer during his base period and the employers by whom such wages were paid, his benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to him for unemployment during the benefit year. When a claimant is ineligible due to lack of earnings in his base period, the determination shall so designate. The claimant shall be allowed 10 days from the delivery of his initial determination to him within which to protest his initial or monetary determination and upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall be referred to an adjudicator for a decision as to the issues presented. All base period employers, as well as the most recent employer of a claimant on a temporary layoff, shall be notified upon the filing of a claim which establishes a benefit year or an ineligible amount.

At any time within one year from the date of the making of an initial determination, the Commission on its own initiative may reconsider such determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.

- (2) **Hearings before Adjudicator.** — When a protest is made by the claimant to his initial determination or a question or issue is presented or raised as to the eligibility of a claimant for benefits under G.S. 96-13 herein, or whether any disqualification shall be imposed by virtue of G.S. 96-14 of this Chapter, or benefits denied, or his account adjusted pursuant to G.S. 96-18 of this Chapter, the claim shall be referred to an adjudicator who shall afford the parties an opportunity to present their positions at an informal conference. The adjudicator can consider any matter, material or statement deemed to be pertinent to the issues, including telephone inquiries when desirable and, after consideration, shall render a conclusion as to the benefit entitlements of the claimant involved. The adjudicator shall notify the claimant and any other interested party of the conclusion reached. Unless the claimant or any other interested party within 10 days after notification of the conclusion of the adjudicator, whether the conclusion be delivered manually or mailed, files an appeal to such conclusion, the conclusion shall be final and benefits paid or denied in accordance therewith.

The Commission shall be deemed an interested party.

The Commission may remove unto itself or transfer it to an appeals referee the proceedings of any claim pending before an adjudicator.

On out-of-state claims filed by a claimant in another state against this State or in cases involving the failure of the claimant to meet any procedural requirement pertaining to the filing of the claimant or denial or adjustment of the account under G.S. 96-18, the adjudicator will not be required to give notice of the time of consideration.

- (c) **Appeals.** — Unless an appeal from the adjudicator is withdrawn, an appeals referee shall set a hearing in which the parties are given reasonable opportunity to be heard. The appeals referee may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the Commission unless within 10 days after the date of notification of, or mailing of the decision, further appeal is initiated. Should the appeals referee uphold the conclusion of the adjudicator, any benefits paid as the result of that decision shall not be charged to any employer's account if that decision is finally reversed. Any reference to "appeals deputy" or "appeals tribunal" in this Chapter shall be deemed to mean "appeals referee."

(d) Repealed by Session Laws 1977, c. 727, s. 54, effective January 1, 1978.

- (e) **Review by the Commission.** — The Commission or Deputy Commissioner may on its own motion affirm, modify, or set aside any decision of an appeals referee on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Commission or Deputy Commissioner may deem proper. The Commission or Deputy Commissioner may remove to itself or transfer to another appeals referee the proceedings on any claim pending before an appeals referee. The Commission shall promptly notify the interested parties of its findings and the decision. In all Commission matters heard by a Deputy Commissioner, the decision of the Deputy Commissioner shall constitute the decision of the Commission; except, the Commission may remove unto itself,

upon its own motion, any claim pending for rehearing and redetermination, provided such removal is done prior to the expiration of appeal period applicable to the decision of the Deputy Commissioner.

(f) Procedure. — The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the Commission for determining the rights of the parties, whether or not such rules conform to common-law or statutory rules of evidence and other technical rules of procedure. All testimony at any hearing before an appeals tribunal upon a disputed claim shall be recorded unless the recording is waived by all interested parties, but need not be transcribed unless the disputed claim is further appealed.

(i) Appeal Proceedings. — The decision of the Commission shall be final, subject to appeal as herein provided. Within 10 days after the decision of the Commission has become final, any party aggrieved thereby who has filed notice of appeal within the 10-day period as provided by G.S. 96-15(h) may appeal to the superior court of the county of his residence. Unless the claimant objects, after being afforded reasonable opportunity to do so, to the Superior Court of Wake County. In case of such appeal, the court shall have power to make party-defendant any other party which it may deem necessary or proper to a just and fair determination of the case. In every case in which appeal is demanded, the appealing party shall file a statement with the Commission within the time allowed for appeal, in which shall be plainly stated the grounds upon which a review is sought and the particulars in which it is claimed the Commission is in error with respect to its decision. The Commission shall make a return to the notice of appeal, which shall consist of all documents and papers necessary to an understanding of the appeal, and a transcript of all testimony taken in the matter, together with its findings of fact and decision thereon, which shall be certified and filed with the superior court to which appeal is taken within 30 days of said notice of appeal. The Commission may also, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section the findings of the Commission as to the facts, if there is evidence to support it, and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner, and shall be given precedence over all civil cases, except cases arising under the Workmen's Compensation Law of this State. An appeal may be taken from the judgment of the superior court, as provided in civil cases. The Commission shall have the right of appeal to the appellate division from a decision or judgment of the superior court and for such purpose shall be deemed to be an aggrieved party. No bond shall be required upon such appeal. Upon the final determination of the case or proceeding the Commission shall enter an order in accordance with such determination. When an appeal has been entered to any judgment, order, or decision of the court below, no benefits shall be paid pending a final determination of the cause, except in those cases in which the court below has affirmed a decision of the Commission allowing benefits or benefits are payable under the provisions of G.S. 96-15(b)(2).

(1977, c. 727, s. 54.)

Editor's Note. —

The 1977 amendment substituted "an adjudicator" for "a deputy" in the fourth sentence of the first paragraph of subdivision (b)(1), rewrote subdivision (b)(2), rewrote subsection (c), and deleted subsection (d), which related to appeal tribunals. The amendment also rewrote subsection (e), deleted the former second sentence of subsection (f), which read "A

full and complete record shall be kept of all proceedings in connection with the disputed claim," and added the third sentence of subsection (i). The amendments to subsections (b), (c) and (d) were made effective Jan. 1, 1978. The amendments to subsections (e), (f) and (i) became effective on ratification, June 24, 1977.

The 1977 amendatory act erroneously referred to subsection (h) in amending subsection (i).

As the other subsections were not changed by the amendment, they are not set out.

§ 96-18. Penalties.

- (g) (1) Any person who, by reason of his fraud, has received any sum as benefits under this Chapter to which he was not entitled shall be liable to repay such sum to the Commission for and on behalf of the trust fund, or, in the discretion of the Commission, to have such sum deducted from future benefits payable to him under this Chapter, provided a finding of the existence of such fraud has been made by a decision pursuant to this Chapter within two years from the commission of such fraud.
- (2) If any person, other than by reason of his fraud, has received any sum as benefits under this Chapter to which he has been found not entitled, he shall be liable to repay such sum to the Commission for and on behalf of the trust fund or, in the discretion of the Commission, shall have such sum deducted from any future benefits payable to him under this Chapter. No such recovery or recoupment of such sum may be effected after 10 years from the last day of the year in which the overpayment occurred. (Ex. Sess. 1936, c. 1, s. 16; 1943, c. 319; c. 377, ss. 29, 30; 1945, c. 552, s. 34; 1949, c. 424, s. 26; 1951, c. 332, s. 16; 1953, c. 401, ss. 1, 22; 1955, c. 385, s. 9; 1959, c. 362, ss. 19, 20; 1965, c. 795, ss. 23, 24; 1971, c. 673, s. 31; 1977, c. 727, s. 55.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, added subsection (g).

As the rest of the section was not changed by the amendment, only subsection (g) is set out.

§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or invalidation of federal acts; suspension of enforcement provisions contested. — (a) It is the purpose of this Chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to credit on payment of federal taxes, of State contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the State that this Chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States Supreme Court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States Supreme Court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder. The enactment by the Congress of the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance Act shall in no way affect the administration of this law except as herein expressly provided.

All federal grants and all contributions theretofore collected, and all funds in the treasury by virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far as may be possible, under the terms of this Chapter: Provided, however, that contributions already due from any employer shall be collected and paid into the said fund, subject to such distribution; and provided further, that the personnel of the State Employment Security Commission shall be reduced as rapidly as possible.

The funds remaining available for use by the North Carolina Employment Security Commission shall be expended, as necessary, in making payment of all such awards as have been made and are fully approved at the date aforesaid,

and the payment of the necessary costs for the further administration of this Chapter, and the final settlement of all affairs connected with same. After complete payment of all administrative costs and full payment of all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall be refunded to such employer, or his duly authorized assignee: Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the Employment Security Commission of North Carolina, shall in such event return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the Employment Security Commission of North Carolina, the said State employment service shall render such service in connection therewith as shall be demanded or required under the provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

(b) The Employment Security Commission may, upon receiving notification from the U.S. Department of Labor that any provision of this Chapter is out of conformity with the requirements of the federal law or of the U.S. Department of Labor, suspend the enforcement of the contested section or provision until the North Carolina Legislature next has an opportunity to make changes in the North Carolina law. The Employment Security Commission shall, in order to implement the above suspension:

- (1) Notify the Governor's office and provide that office with a copy of the determination or notification of the U.S. Department of Labor;
- (2) Advise the Governor's office as to whether the contested portion or provision of the law would, if not enforced, so seriously hamper the operations of the agency as to make it advisable that a special session of the legislature be called;
- (3) Take all reasonable steps available to obtain a reprieve from the implementation of any federal conformity failure sanctions until the State legislature has been afforded an opportunity to consider the existing conflict. (1937, c. 363; 1939, c. 52, s. 8; 1947, c. 598, s. 1; 1977, c. 727, s. 56.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, designated the former provisions of this section as subsection (a) and added subsection (b).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

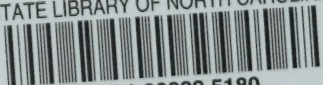
October 15, 1977

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1977 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN

Attorney General of North Carolina

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